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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 136

JAMES W. BUTTERFIELD, DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, DETROIT, MICHIGAN, PETITIONER,

vs.

JOHN ZYDOK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 22, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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1 In United States District Court for the Eastern District of Michigan, Southern Division

No. 9883.

JOHN ZYDOK, PETITIONER

v.

JAMES W. BUTTERFIELD, DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, DETROIT, MICHIGAN, RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER FOR ISSUANCE THEREOF.—Filed October 24, 1950

To The Court:

The petition of Alan N. Brown, attorney for John Zydok, of the City of Detroit, Wayne County, Michigan, respectfully shows:

1. That John Zydok is now imprisoned by the United States Immigration & Naturalization Service in the Wayne County Jail in the said City of Detroit.

2. That according to the best of your petitioner's knowledge and belief, such confinement is not for any lawful cause or reason and not by virtue of any warrant, order or Constitutional process whatsoever and not for any crime or offense against the laws of the U. S. A., State of Michigan or City of Detroit or against or upon any of its citizens or inhabitants thereof.

2 3. Wherefore your petitioner prays that a writ of Habeas Corpus may be issued to inquire into the cause of the imprisonment and detention of the said person and that the said named person may be relieved therefrom.

ALAN N. BROWN,
Petitioner and Attorney for John Zydok, prisoner,
963 Penobscot Building, Detroit 26, Michigan.

Upon filing the within petition, let a Writ of Habeas Corpus issue as prayed for therein.

(Signed) THOMAS P. THORNTON,
Judge of the U. S. District Court,
Eastern District of Michigan, Southern Division.

Duly sworn to by Alan N. Brown. Jurat omitted in printing.

3 In United States District Court

WRIT OF HABEAS CORPUS—Filed October 24, 1950

In the Name of the People of the United States of America.

To United States Immigration & Naturalization Service (Detroit office), John Doe and Richard Roe, we command that you have the body of John Zydok by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said John Zydok shall be called or charged, before the undersigned, Judge of the U. S. District Court, at the Federal Building, Detroit, Michigan on the 24th day of October, A. D. 1950 at 2 p. m. o'clock, to do and receive what shall then and there be considered concerning the said John Zydok and have you then there this writ.

Witness, Hon. Thomas P. Thornton and the seal of the U. S. District Court, Eastern District of Michigan, Southern Div. this 24th day of October, A. D. 1950.

GEORGE M. READ,
Clerk of the U. S. District Court,
Eastern District of Michigan, Southern Division.
(S.) JOHN J. GINTHER,
Dep. Clk.

4 In United States District Court

RETURN OF SERVICE OF WRIT OF HABEAS CORPUS—Filed October 24, 1950

UNITED STATES OF AMERICA,
STATE OF MICHIGAN,
County of Wayne, ss:

Mitchell Schnaar, of the City of Detroit, Wayne County, Michigan, being first duly sworn, deposes and says that he is an attorney associated with Alan N. Brown, attorney for the above named petitioner, and that on the 24th day of October, 1950, he served a true copy of the Writ of Habeas Corpus issued in the above entitled cause on the 24th day of October, 1950 by the Hon. Thomas P. Thornton, United States District Judge, on the above named defendant, by personally handing same to Harry Kobel, District Adjudications Officer of said defendant and duly authorized agent to accept service of said Writ of Habeas Corpus.

Further deponent saith not.

(S.) MITCHELL SCHNAAR,
Deponent.

Subscribed and sworn to before me this 24th day of October, A. D. 1950.

(S.) ROBERTA MYERS,
Notary Public, Wayne County, Michigan.

My Commission expires July 4, 1954.

5 In United States District Court

ANSWER AND RETURN TO PETITION FOR WRIT OF HABEAS CORPUS—Filed October 27, 1950

Now comes James W. Butterfield, District Director of the Immigration and Naturalization Service, the respondent herein, by Edward T. Kane, United States Attorney and Joseph C. Murphy, Assistant United States Attorney, and Harry Kobel, Assistant District Adjudications Officer, Immigration and Naturalization Service, and files his answer and return to a writ of habeas corpus in this cause stating as follows:

1. Answering the allegations contained in paragraph 1 of the petition filed in this cause the respondent admits the same.

2. Answering the allegations contained in paragraph 2 of the petition filed in this cause your respondent denies the same and states:

A. That the petitioner John Zydok is an alien.

B. That pursuant to a warrant dated June 30, 1949, issued by W. F. Kelly, Assistant Commissioner, Enforcement Division of the Immigration and Naturalization Service, a copy of which is attached and made a part hereof, and by direction of the Acting Commissioner of the Immigration and Naturalization Service, the petitioner, John Zydok, on October 23, 1950 was arrested and taken into custody.

C. That there is presently pending before the Immigration and Naturalization Service at Detroit, Michigan a proceeding under the aforesaid warrant to determine the deportability of this petitioner, John Zydok, and that a hearing was held beginning September 19, 1950 and continued without date at the request of this petitioner.

C. That under the authority contained in Section 20 of the Immigration Act of 1917, as amended by Section 23
6 of the Subversive Activities Control Act of 1950, the Attorney General, acting through his duly authorized representatives directed that this petitioner, John Zydok, be continued in custody.

Wherefore, your respondent respectfully moves that the writ of habeas corpus issued in this cause be discharged and that the petitioner remain in the custody of this respondent.

EDWARD T. KANE,
United States Attorney.
JOSEPH C. MURPHY,
Assistant U. S. Attorney.
HARRY KOBEL,
Assistant District Adjudications Officer,
Immigration and Naturalization Service.

WARRANT

For Arrest of Alien

COPY COPY

United States of America
Department of Justice
Washington

0800-65204
A-5098547

To District Director of Immigration and Naturalization, Detroit, Michigan or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Iwan Zydok or John Zydok alias John Son who entered this country

at New York, New York ex SS "Carpathia" on the 23rd day of June, 1913 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law;
7 and for the following reasons, to wit: The Act of October 16, 1918, as amended, in that he was, after entry a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that advises, advocates, or teaches the overthrow, by force or violence of the Government of the United States; and the Act of October 16, 1918, as amended, in that he was, after entry a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays any written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1949." Authority has been granted for release under bond in the sum of $2,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 30th day of June, 1949.

(S.) W. F. KELLY,
Assistant Commissioner,
Enforcement Division.

8 In United States District Court

PROOF OF SERVICE OF PETITION TO ATTORNEY GENERAL TO GRANT BAIL—Filed October 27, 1950

UNITED STATES OF AMERICA,
STATE OF MICHIGAN,
County of Wayne, ss:

Alan N. Brown, of the City of Detroit, County of Wayne, State of Michigan, being first duly sworn, deposes and says that he is the attorney for John Zydok, the above named alien who was arrested on Monday, October 23, 1950 by agents of the United States Immigration and Naturalization Service in Detroit, Michigan; and that said alien petitioner is being so restrained and detained on the sole claim and sole authority of instructions

from the Attorney General in the enactment of September 23, 1950 of the Internal Security Act of 1950, Section 23 (a), and that said Act states, in part, that such alien may in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole.

Deponent further says that, pursuant to the foregoing provision, on the 25th day of October, 1950, as attorney for said John Zydok, he petitioned J. Howard McGrath, Attorney General of the United States, Washington, D. C., to grant reasonable bail under his discretionary power as provided for in section 23 (a) Internal Security Act 1950, as above stated, to the said petitioner, John Zydok, by Western Union night letter, a true copy of which is hereto attached and made part hereof.

Deponent further says that on the 27th day of October, 1950 he mailed a true copy of said petition to Edward T. Kane, United States Attorney, by enclosing same in a sealed envelope, sufficiently-stamped, and addressed to his offices, to-wit: Federal Building, Detroit 31, Michigan, and mailing same in the U. S. mail chute on the ninth floor of the Penobscot Building, Detroit 26, Michigan.

9

Further deponent saith not.

(S.) ALAN N. BROWN,
Deponent.

Subscribed and sworn to before me this 27th day of October, A. D. 1950.

(S.) ROBERTA MYERS,
Notary Public, Wayne County, Michigan.

My Commission expires July 4, 1954.

WESTERN UNION

(True Copy)

October 25, 1950.

J. HOWARD MCGRATH,
Attorney General of the United States,
Washington, D. C.

HONORABLE SIR:

Eighth Amendment of US Constitution prohibits excessive bail Stop Section 23a Internal Security Act 1950 gives you discretion to allow or deny bail pending deportation proceedings Stop Believe discretion denying bail conflicts with eighth amendment Stop Further believe this section invasion of right of judicial branch of gov-

ernment as defined in US Constitution Stop John Zydok Detroit arrested October 23 for deportation habeas corpus proceedings now pending in US District Court Detroit before Thomas Thornton District Judge adjourned to October 30 for hearing Stop Zydok in US continuously since 1913 no criminal record has three children two served in last war owns home reported faithfully before arrest in pending deportation case Stop Respectfully petition you to grant reasonable bail under discretionary power of section 23a Internal Security Act 1950.

Respectfully yours,

ALAN N. BROWN,
Attorney for John Zydok,
963 Penobscot Building,
Detroit 26, Michigan.

10 In United States District Court

TRAVERSE—Filed November 3, 1950

The relator, for his traverse to the return herein, by his attorney, Alan N. Brown, alleges:

1. The relator was arrested and is being held without bail in custody, without any legal process whatsoever; the original warrant of arrest has lost its force as an arresting instrument.

2. The re-arrest of the relator is not within the terms of section 23(a) of the Internal Security Act of 1950.

3. Section 23(a) of the Internal Security Act of 1950, does not authorize the detention of the relator without bail. In many district courts in the United States, it has been held that an alien cannot be held without bail because of the Internal Security Act of 1950.

4. The re-arrest of the relator is an abuse of discretion by the Attorney General in violation of the Fifth and Eighth Amendments to the Federal Constitution.

5. The re-arrest of the relator is not for the ordinary purposes of bail, but for the improper and indirect purpose of compelling him to apply for travel documents.

6. The re-arrest of the relator and his detention without bail, is a violation of the First Amendment to the Federal Constitution, and serves to discriminate against him because of his views and associations.

7. Relator repeats and re-alleges and makes a part hereof with the same force and effect as if herein specifically set forth, each and every allegation of paragraph 1 and 2 of the petition, heretofore verified on the 24th day of October, 1950 by Alan N. Brown, as attorney in said cause, for John Zydok.

8. Relator denies each and every allegation in paragraph 2, sub-paragraph B. He admits that there is presently pending
11 before the Immigration and Naturalization Service in Detroit a proceeding under the aforesaid warrant to determine the deportability of your relator, and admits that a hearing was held beginning September 19, 1950, but denies that it was continued solely at the request of your relator, and in answer thereto says that the proceeding had not been concluded and a date for the continuation of the hearing was to be set when it could be determined when the presiding inspector would be available in Detroit to conclude it.

9. Your relator denies each and every allegation in paragraph 2, sub-paragraph D (incorrectly stated in the Return as sub-paragraph C).

Wherefore, relator respectfully requests that the writ of habeas corpus be sustained and that he be released from custody on the bail heretofore posted by him in the deportation proceedings still pending against him.

(S.) ALAN N. BROWN,
Attorney for Relator,
963 Penobscot Building,
Detroit 26, Michigan.

Duly sworn to by Alan N. Brown. Jurat omitted in printing.

12 In United States District Court

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed November 10, 1950

1. The petitioner, John Zydok, on October 24, 1950, by his attorney, filed a petition for a writ of habeas corpus wherein he alleges that his confinement

> "is not for any lawful cause or reason and not by virtue of any warrant, order or Constitutional process whatsoever and not for any crime or offense against the laws of the U. S. A."

2. The hearing on the petition was set for 2:00 o'clock on the same day at which time the petitioner was produced in court and was orally informed by Mr. Joseph C. Murphy, Chief Assistant United States District Attorney for the Eastern District of Michigan, as to the cause of his detention by the respondent, and at which time the Government requested an adjournment of three days in order to make a formal return, which request was granted by the Court.

3. The answer and return to the petition by the respondent alleges that the petitioner is an alien and that pursuant to a warrant dated June 30, 1949, issued by W. F. Kelly, Assistant Commissioner, En-

forcement Division of the Immigration and Naturalization Service, and by direction of the Acting Commissioner of the Immigration and Naturalization Service, the petitioner, John Zydok, on October 23, 1950, was arrested and taken into custody; and that there is presently pending before the Immigration and Naturalization Service at Detroit, Michigan, a proceeding under the aforesaid warrant to determine the deportability of the petitioner, John Zydok, and that a hearing was held beginning September 19, 1950, and continued without date at the request of this petitioner, and that under the authority contained in Section 20 of the Immigration Act of 1917, as amended by Section 23 of the Subversive Activities Control Act of 1950, the Attorney General, acting through his duly authorized representatives, directed that this petitioner, John Zydok, be continued in custody.

13 4. Appended to and made a part of the answer returned by the respondent was the afterdescribed warrant:

WARRANT
FOR ARREST OF ALIEN

"Form I-200
(Rev. 5-1-45)
U. S. Department of Justice
Immigration and
Naturalization Service

UNITED STATES OF AMERICA
Department of Justice
Washington

0800-65204
No. A-5098547

To District Director of Immigration and Naturalization, Detroit, Michigan or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Iwan Zydok or John Zydok alias John Son who entered this country at New York, New York ex SS 'Carpathia' on the 23rd day of June, 1913 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to-wit: The Act of October 16, 1918, as amended, in that he was, after entry a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that advises, advocates, or teaches the overthrow, by force or violence of the Government of the United States; and the Act of October 16, 1918, as amended, in

that he was, after entry a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays any written or printed matter advising, advocating or teaching the overthrow, by force or violence,
14 of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation 'Salaries and Expenses, Immigration and Naturalization Service, 1949.' Authority has been granted for release under bond in the sum of $2,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 30th day of June, 1949.

(S.) W. F. Kelly,
Assistant Commissioner
Enforcement Division."

5. The traverse filed by the petitioner on November 3, 1950, alleges substantially as follows:

"1. The relator was arrested and is being held without bail in custody, without any legal process whatever; the original warrant of arrest has lost its force as an arresting instrument.'

"2. The re-arrest of the relator is not within the terms of section 23(a) of the Internal Security Act of 1950."

"3. Section 23(a) of the Internal Security Act of 1950, does not authorize the detention of the relator without bail. In many district courts in the United States, it has been held that an alien cannot be held without bail because of the Internal Security Act of 1950."

"4. The re-arrest of the relator is an abuse of discretion by the Attorney General in violation of the Fifth and Eighth Amendments to the Federal Constitution."

15 "5. The re-arrest of the relator is not for the ordinary purposes of bail, but for the improper and indirect purpose of compelling him to apply for travel documents."

"6. The re-arrest of the relator and his detention without bail, is a violation of the First Amendment to the Federal Constitution, and serves to discriminate against him because of his views and associations."

6. That the petitioner is an alien who has resided in the United States since June 1913.

7. That pursuant to the said warrant the petitioner was arrested in August 1949, released under $2,000.00 bail, and remained at large on bail until October 23, 1950.

8. That a deportation proceeding is presently pending against the petitioner based upon the charges set forth in the aforementioned warrant.

9. That the petitioner was taken into custody on the 23rd day of October, 1950, by the respondent under the provisions of Section 23 of the Subversive Activities Control Act of 1950.

10. That the necessity for the Subversive Activities Control Act, as set forth in the Act itself, is, in part, as follows:

> "The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its
> 16 stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

11. That on May 25, 1949, the petitioner was a member of the Communist Party and was financial secretary of the Hamtramck Section of the Communist Party of Michigan for the year 1949.

12. That on the 23rd day of October, 1950, the United States Department of Justice had in its possession information to the effect that the petitioner was a member of the Communist Party, and that he was financial secretary of the Hamtramck Section of the Communist Party of the State of Michigan for the year 1949.

13. That on the 7th day of November, 1950, the adjourned hearing on the petition for writ of habeas corpus filed herein was

resumed and extended over to the 8th day of November, 1950; and that on the 7th and 8th days of November, 1950, the petitioner, while testifying in support of his petition for a writ of habeas corpus, did not testify that he was not a member of the Communist Party.

14. That during the hearing on the said petition the petitioner offered no testimony or evidence to the effect that he is not presently a member of the Communist Party.

15. That on the 23rd day of October, 1950, the petitioner was a member of the Communist Party.

16. That the petitioner, while under cross-examination by the Chief Assistant United States Attorney, was a consistently
17 evasive witness and his evasive demeanor in testifying in relation to his communistic activities convinces this Court that he is knowingly and wilfully participating in the Communist movement.

17. That this Court finds that there has been no abuse of discretion by the Attorney General in continuing the petitioner in custody without bond.

Conclusions of Law

1. The action of the Attorney General in the instant matter is authorized by that part of the Subversive Activities Control Act of 1950 which reads as follows:

> "Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole." (Section 23.)

2. The petitioner, after being released on bail in the deportation proceedings, remained in the constructive custody of the Department of Justice so that it was not necessary to issue a new warrant to re-take him into actual custody.

3. Section 23 of the Subversive Activities Control Act of 1950 provides for continuing in custody an alien who has been previously taken into custody under a warrant of the Attorney General if the said alien is the subject of a pending deportation proceeding, and thereby a re-taking into actual custody of this petitioner is within the contemplation of this statute.

4. Section 23 of the Subversive Activities Control Act of the Internal Security Act of 1950 authorizes the continued custody

of the petitioner without bail within the discretion of the Attorney General.

18 5. That this court has jurisdiction to review the action of the Attorney General of the United States in exercising his discretion of continuing the petitioner in custody without bail. (United States ex rel. Potash v. District Director of Immigration and Naturalization, 2 Cir., 169 F. 2d 747; Colyer v. Skeffington, D. C., 265 F. 17; United States ex rel. Pappis v. Tomlinson, D. C., 45 F. Supp. 447; Yanish v. Phelan, et al., 86 F. Supp. 461.)

6. That the action of the Attorney General in continuing petitioner in custody under the provisions of the Subversive Activities Control Act of 1950 does not violate the First, Fifth, and Eighth Amendments of the Constitution of the United States.

7. That the petitioner, through his counsel, Mr. Alan Brown, has conceded that if this Court determines that it has jurisdiction to review the action of the Attorney General in continuing the petitioner in custody without bail, then, and in that event, Section 23 of the said Act in not unconstitutional.

8. In reviewing the action of the Attorney General under the provisions of this Act the petitioner has the burden of establishing abuse of discretion. He must make a "clear and convincing showing as would justify the District Court in holding there has been an abuse of discretion." United States ex rel. Potash v. District Director of Immigration and Naturalization, 2 Cir., 169 F. 2d 747. (Yanish v. Phelan et al., 86 F. Supp. 461; United States ex rel. Doyle v. District Director of Immigration and Naturalization at Port of New York; United States ex rel. Eisler v. District Director of Immigration and Naturalization at Port of New York; United States ex rel. Williamson v. District Director of Immigration and Naturalization at Port of New York; United States ex rel. Smith v. District Director of Immigration and Naturalization at Port of New York (two cases), 169 F. 2d 753.)

9. That the petitioner has failed to make any showing that would justify this Court in holding that there has been an abuse of the discretion vested in the Attorney General under the
19 provisions of Section 23 of the Subversive Activities Control Act of 1950 in continuing the petitioner in custody without bail; and that accordingly this Court concludes that there has been no abuse of discretion by the Attorney General.

10. In appearing as a witness in his own behalf, the petitioner had ample opportunity to testify that he was not a member of the Communist Party and part of the Communist movement in the United States as of the date of his arrest on October 23, 1950.

It is, therefore, ordered that the within petition for writ of habeas corpus be, and the same hereby is denied.

Dated at Detroit, Michigan, this 10th day of November, A. D. 1950.

(S.) THOMAS P. THORNTON,
United States District Judge.

In United States District Court

TRANSCRIPT OF TESTIMONY

Transcript of testimony taken in the above-entitled matter before Honorable Thomas P. Thornton, District Judge, at Detroit, Michigan, on Monday, October 30, Tuesday, November 7, and Wednesday, November 8, 1950.

Appearances: Alan N. Brown, Esq., and Mitchell Schmaar, Esq., appearing on behalf of the Petitioner, John Zydok. Joseph C. Murphy, Esq., Assistant United States Attorney, appearing on behalf of the Government. Harry Kobel, Esq., District Adjudications Officer for the Immigration and Naturalization Service, Detroit.

Detroit, Michigan,
Monday, October 30, 1950
2 o'clock, P. M.

(Previous to the following testimony there was discussion and argument, which was reported but is not here transcribed.)

* * * * * * *

20 COLLOQUY

Mr. BROWN: Now, I ask the United States Attorney to show on the record in the testimony the specific authority for arresting this alien.

The COURT: That is in the record, in the warrant attached to the return.

Mr. BROWN: The warrant attached to the return is a warrant that was issued in 1949.

The COURT: That is right.

Mr. MURPHY: As I take it, he denies that this man was arrested under that warrant, so we are prepared to show he was arrested under that warrant, and that it was on the order of the Attorney-General.

The COURT: All right.

Mr. MURPHY: Mr. Kobel.

KOBEL, HARRY, was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. MURPHY:

The CLERK of the COURT: Your name?
The WITNESS: Harry Kobel.

By Mr. MURPHY:

Q. Your occupation, Mr. Kobel?
A. I am District Adjudications Officer for the Immigration and Naturalization Service in Detroit.
Q. That is a bureau of the Department of Justice; is that correct?
A. That is correct.
Q. As such, are you familiar with the matter of one John Zydok?
A. I am.
Q. Can you tell us now when this man was last taken into custody?
A. He was taken into custody last Monday or Tuesday. I don't remember the exact date.
Q. Can you tell us on what process, if any, he was taken into custody by your agency?
21 A. The process used was a warrant of arrest that had been issued for Mr. Zydok some time in 1949, and pursuant to radiographic directions we had received from the Department on October 23, and supplemented by subsequent radiograms on October 25.

Mr. MURPHY: Mark this, please.

(A warrant of arrest re. John Zydok, dated June 30, 1949, was thereupon marked Government's Exhibit 1 by the reporter.)

By Mr. MURPHY, continuing:

I will show you Government's proposed Exhibit 1 and ask you whether or not you identify that as the warrant upon which the petitioner was arrested? (Handing exhibit to the witness.)
A. That is correct.

Mr. MURPHY: I offer Government's Exhibit No. 1. (Handing exhibit to Mr. Brown.)
Mr. BROWN: No objection.
The COURT: It may be admitted.

Was that the original of the warrant that is set out in the return?

Mr. MURPHY: That is the original of the warrant that is set out in the return.

The COURT: All right.

By Mr. MURPHY, continuing:

Q. Now, you said he was taken into custody then and ordered continued into custody upon directions you received by radiogram?

A. That is right.

Mr. MURPHY: Mark these, please.

(A copy of a radiogram dated October 21, 1950, to "District Director, Detroit," from "Kelly," was thereupon marked Government's Exhibit 2 by the reporter.)

(A document was thereupon marked Government's Exhibit 3 by the reporter.)

(A copy of a radiogram dated October 25, 1950, to "District Director, Detroit," from "Mackey," was thereupon marked Government's Exhibit 4 by the reporter.)

By Mr. MURPHY, continuing:

Q. I will show you Government's proposed Exhibit No. 2 and Government's proposed Exhibit No. 4 and ask you whether or not you can identify those papers? (Handing exhibits to the witness.)

22 A. Yes, I can.

Q. And can you identify those as being part of the files and records of your office?

A. Yes. These copies were made at my direction, and they are exact copies of original radiograms which are on file in our office as part of the John Zydok file.

Q. And are those two papers that you hold in your hand there papers that would be made in the regular and ordinary course of the business of your agency?

A. Yes, sir.

Q. And you say they are a part of your files and records?

A. That is correct.

Q. I show you, again, Exhibit No. 2. That is not a complete copy, is it, of a radiogram?

A. No, that is the portion of the radiogram that specifically related to John Zydok.

Mr. MURPHY: I see. I offer Exhibits No. 2 and 4. (Handing exhibits to Mr. Brown.)

Mr. BROWN: No objection.

The COURT: They may be admitted.

Mr. BROWN: Will you read them into the record?

Mr. MURPHY: Yes. Exhibit No. 2:

(Reading):

EXHIBIT 2

"Wash FLD 1705 Oct. 21

"District Director Detroit

"Apprehend immediately and detain the following aliens pursuant to section twenty of nineteen seventeen act as amended by Internal Security Act Colon * * * John Zydok.

(Signed) "KELLY."

EXHIBIT 4, RADIOGRAM

(Reading):

"Wash FLD 1545 Oct 25

"District Director Detroit

"By authority of the Attorney-General delegated to me by section nine zero one of title eight CFR paren twelve F R 23 five zero seven two July thirty-one nineteen forty seven paren under section three seven of the alien registration Act of nineteen forty-eight USC four five eight you are directed to detain John Zydok under section twenty of the immigration act of nineteen seventeen as amended by the Internal Security Act of nineteen fifty pending further instruction stop The taking into custody automatically cancelled the bond stop Do not release under bond.

"MACKEY."

By Mr. MURPHY, continuing:

Q. Now, Mr. Kobel, do you know a man in your agency by the name of "Kelly"?

A. I do.

Q. And what is his capacity?

A. He is the Assistant Commissioner for Enforcement in the central office of the Immigration and Naturalization Service.

Q. Located where?

A. In Washington, D. C.

Q. And do you know a man by the name of Mackey?

A. Yes, sir. That is A. E. Mackey who is acting Commissioner of Immigration and Naturalization in Washington.

The COURT: Is that the same "Kelly" that signed the warrant?

A. Yes, your Honor.

The COURT: Issued in 1949, on the 30th day of June?

A. Yes, your Honor.

Mr. MURPHY: That is all.

CROSS EXAMINATION.

By Mr. BROWN:

Q. Mr. Kobel, did you receive any other instructions since those two radiograms were sent you?

A. Pertaining to Mr. Zydok?

Q. Yes.

A. No.

Q. Did you receive any instructions at all as to why Mr. Zydok was sought to be re-arrested?

24 A. No.

Q. You have personal knowledge, I believe you testified, as to the Zydok file, do you not?

A. Yes.

Q. When he was first arrested there was bail set at $2,000, was there not?

A. Yes; in accordance with the terms of the warrant, that is correct.

Q. And he did supply that bail, did he?

A. My recollection is that he did.

Q. And did the bail have a reporting provision contained therein?

A. I don't recollect that particular feature. It may have had.

Q. Well, practically all of the bail bonds that were issued at that time in 1949 contained these reporting provisions, did they not, in your district?

A. Some of them did.

Q. Don't you recall whether this particular bond had the reporting provision contained in it?

A. No, I can't recall this particular bond.

Mr. MURPHY: I submit at this particular time this line of questioning by counsel is irrelevant and immaterial. We are now establishing what we alleged in our return, and I think the questioning of Mr. Brown at this time is directed to the discretionary power exercised by the Attorney-General which, as far as I know, isn't an issue yet.

The COURT: I think that is your object, is it not, Mr. Brown?

Mr. BROWN: The object is to show that the Attorney-General, in arresting Mr. Zydok, did so and abused his discretion in refusing to grant bail. Now, I cannot show the latter without showing first what this man did while he was under the same warrant of arrest and was released under that warrant of arrest.

Mr. MURPHY: If that is the situation, I wonder if Mr. Brown will now admit that this man was arrested upon the direction of the Attorney-General?

Mr. BROWN: Yes, I will admit that he was.

Mr. MURPHY: All right.

25 The COURT: All right.

By Mr. BROWN, continuing:

Q. Mr. Kobel, you said on direct examination that you had personal knowledge of the John Zydok file?

A. Yes.

Q. And was in charge of it.

A. No, I didn't say I was in charge of it.

Q. You had personal knowledge of it?

A. Yes.

Q. Do you know whether or not Mr. Zydok faithfully reported as requested so to do under the provisions of his bail bond?

Mr. MURPHY: Now, just a minute.

The COURT: The question is based on a false premise, isn't it?

Mr. MURPHY: That is right. And, further, it is the Government's position that the question of abuse of discretion by the Attorney-General is at this point not reviewable by the Court. We would like to submit argument on that.

If that is the issue now—

The COURT (Interposing): You have announced that is the issue, have you not?

Mr. BROWN: Yes. I am prepared to argue that.

The COURT: That the Attorney-General has abused his discretion and that I, as a District Court, have a right to review that question and to ascertain whether or not there was such an abuse.

Mr. BROWN: That is correct.

The COURT: It is your contention I don't have the right to review it?

Mr. MURPHY: That is correct, your Honor.

The COURT: Well, we better argue that right now.

Mr. MURPHY: I think that is the issue.

(The witness was thereupon temporarily excused from the stand.)

* * * * * * *

(Thereupon followed discussion and argument of counsel, which was reported but is not here transcribed, following which the matter was adjourned.)

26 Detroit, Michigan,
Tuesday, November 7, 1950,
2:30 o'clock P. M.

(Discussion was had between Court and Counsel, which was reported but is not here transcribed.)

Mr. BROWN: May I recall Mr. Kobel to the stand for the purpose of cross-examination?

The COURT: All right.

KOBEL, HARRY, thereupon resumed the stand as a witness on behalf of the Government, and having been previously duly sworn, testified further as follows:

CROSS EXAMINATION (continued).

By Mr. BROWN:

Q. Mr. Kobel, since we were in court the last time, since you were on the stand on the previous hearing, have you received any further notice from the Attorney-General or the Attorney-General's Office giving any reasons for the re-arrest of John Zydok?

A. Not to my knowledge.

Q. Do you know whether or not anyone else in your office has received further instructions or reasons as to the continued detention of Mr. Zydok?

A. What notice are you referring to? I believe I produced in court copies of two radiograms. I believe the last one was dated October 25, in which were informed by Central Office, by the Acting-Commissioner, that bond would not be set.

I don't know of any notice or any instructions received after October 25.

Q. Have you received any other since that time, you or your office received any reason from the Attorney-General or the Attorney-General's Office for the re-arrest of Mr. Zydok, or why bail is being refused him?

A. I haven't received anything. I haven't received any instructions.

27 Q. Do you know whether or not your office has received any such instructions?

A. Not to my knowledge.

Q. Mr. Zydok was arrested under the original warrant in July of 1949, was he not?

A. I have to see the original warrant, but I believe it was about that.

Q. And at that time $2,000 bail was set for Mr. Zydok by the Attorney-General?

A. That is correct.

Q. And that bond was posted?

A. That is right.

Q. And, as of this date it is still in your possession?

A. No. The bonds may be in our physical possession, but I know to my own knowledge that bond was cancelled and notice was sent to the bondsman to pick up the security.

Q. But, so far as you know, the securities have not at this time been picked up?

A. Well, that isn't in my department. I wouldn't know.

Q. Was one of the conditions of the bail of Mr. Zydok a requirement to report to the Department?

A. There is a general provision in all Immigration bonds that he shall report for hearings when called. Whether there was any additional provision, I would have to see the bond.

Q. You don't have that in your file?

A. It may be here.

Q. Do you want to check that?

Mr. MURPHY: I am advised that it is not in the file that we have here; that it is in the Parole Section.

The WITNESS: It may be that the bond did contain a reporting provision, because some of the bonds did contain that reporting provision.

By Mr. BROWN, continuing:

Q. Do you know whether or not Mr. Zydok reported regularly?

A. Again, that isn't my division, but I believe that he did report, at least to my knowledge.

Q. Do you know of any transgressions or violations of law that Mr. Zydok committed during the time he was on parole?

28 Mr. MURPHY: Just a minute. I object to that on the grounds that it is immaterial to the issues here as to what he knows. He isn't the man that determines whether or not this man should be continued on bond. So, I submit that whether he knows or whether he doesn't know would be immaterial to the issues in this hearing.

Mr. BROWN: May it please the Court, in reply to that, Mr. Kobel has already testified that he is in charge of the proceedings—

The WITNESS (Interposing): I didn't so testify. I specifically stated on two—

Mr. BROWN: (Interposing): I apologize.

The WITNESS (Continuing): —occasions that I was not in charge of the case. I had knowledge of the case.

Mr. BROWN: No. Rather, of the proceedings at the Immigration and Naturalization Service.

The WITNESS: I am not in charge of the proceedings in this case.

By Mr. BROWN, continuing:

Q. What is your connection with the Immigration and Naturalization Service, Mr. Kobel?

A. I am District Adjudications Officer. As such, I am a staff officer, and, in general have knowledge of all our proceedings.

The COURT: I will sustain the objection.

By Mr. BROWN, continuing:

Q. Do you know of any violation of law that Mr. Zydok committed after the passage of the McCarran-Wood Act, between that date and the date he was arrested by the Attorney-General?

A. I have had no personal contact with Mr. Zydok. I can't testify either way on that question.

Q. Do you know of your personal knowledge, Mr. Kobel, of any reason why Mr. Zydok was arrested, except for the passage of the McCarran-Wood Act?

A. Yes; we received instructions from the Acting-Commissioner to take Mr. Zydok in custody.

Q. In other words, you yourself exercised no discretion in carrying out that particular order; is that correct?

A. No; we acted on instructions from the Acting-Commissioner.

Mr. BROWN: That is all.

29 REDIRECT EXAMINATION.

By Mr. MURPHY:

Q. You are familiar with the fact, are you not, Mr. Kobel, that Congress did enact, during the 81st Session of Congress at their Second Session, the Subversive Activities Control Act?

A. I am aware of that.

Mr. MURPHY: No further questions.

Mr. BROWN: That is all. You may step down.

(The witness was thereupon excused.)

* * * * * * * *

Mr. BROWN: Mr. Zydok, would you take the stand.

ZYDOK, JOHN, the Petitioner herein, was thereupon called as a witness in his own behalf, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. BROWN:

The CLERK OF THE COURT: Your name?
The WITNESS: John Zydok.
The COURT: Keep your voice up, now, Mr. Zydok, so that we can all hear you.

By Mr. BROWN:

Q. How old are you, Mr. Zydok?
A. Thirty-four.
Q. Your age?
A. I am fifty-four.
Q. When did you arrive in the United States?
A. 1913.
Q. 1913. From what country?
A. From Poland.
Q. And have you lived in the United States all the time since 1913?
A. All the time.
Q. What type of work do you do?
A. I am working in a restaurant right now.
Q. Do you own any property?
A. Yes, I do.
Q. What kind of property do you own, and where is it located?
A. House in Detroit.
Q. What is the address?
A. 13454 Main Street.
Q. And what kind of property is that?
A. House.
Q. I mean, is it a single home or two-flat?
A. Single home.
Q. How many rooms?
A. Five rooms.
Q. Do you have a family?
A. I do.
Q. How many children?
A. I got three children, two sons and a daughter.
Q. And do any of them live with you?
A. No, just my wife.
Q. Do you have any grand-children?

A. I got five.

Q. Did any of your sons serve in the Armed Forces of the United States?

A. Both of them.

Q. In what war?

A. The last war.

Q. In World War II?

A. I didn't get you.

Q. In World War II?

(No response.)

Q. Is your daughter married?

A. Yes, she is married.

Q. Were your children born in this country?

A. Yes, in this country.

Q. Were your grand-children born in this country?

A. Yes, in this country.

Q. During World War II, Mr. Zydok, did you engage in any patriotic conduct in behalf of the United States?

A. I don't get you.

Q. Did you do anything that your considered patriotic on behalf of the United States in the last war?

(No response.)

Q. Let me put it this way, Mr. Zydok: Did you sell any Bonds?

A. Yes, I did.

31 Q. About how many?

A. About 50,000, I sold myself.

Q. About $50,000 worth of Bonds. Did you donate any blood to the Red Cross?

A. I donated seven times where I worked, for the United States Army.

Q. Were you required to report regularly to the Department of Immigration and Naturalization Service after your first arrest and release on bail in August of 1949?

A. Yes, I did.

Q. How often did you report at that time?

A. Since I started, I was reported every week. Then, I forgot when; they call me every month. I report every month.

Q. Did you report regularly?

A. Regularly every month.

Q. And during that time did you leave the State of Michigan? Did you leave the State of Michigan during that time?

A. No, I didn't.

Q. Did you do ——

A. (Interposing): I don't know.——

Q. (Continuing): Did you do whatever was requested of you to do while you were reporting, Mr. Zydok?

(No response.)

Q. Did you do what was requested of you to do while you were reporting? Do you know what I mean by that?

A. I don't get you.

Q. Whatever the Department of Immigration and Naturalization Service told you to do while you were reporting, did you do that?

A. Yes, I did.

Q. Have you been told why you were re-arrested in October, 1950?

A. I forgot. I guess it was——

Q. (Interposing): No. Did anyone tell you why you were arrested?

A. I forgot.

Q. Have you violated any laws since the passage of the McCarran-Wood Act?

A. I don't think so.

32 The COURT: Is the answer he doesn't think so?

Mr. BROWN: Yes.

By Mr. BROWN, continuing:

Q. If you were released on bail, Mr. Zydock, would you, if requested to report, report regularly to the Department of Immigration and Naturalization Service?

A. Yes, I did regularly.

The COURT: What is the answer?

A. Yes, I did regularly.

The COURT: I don't think he actually understood your question.

By Mr. BROWN, continuing:

Q. Mr. Zydok, if you were released on bail by this Court today and required to report to the Immigation and Naturalization Service, would you willingly report?

A. Yes, I will.

Q. Any reason why you should not report?

A. No reason.

Q. Is there any reason why you would want to leave the country?

(No response.)

Q. If you were released on bail today, is there any reason why you should want to leave the country, the United States?

(No response.)

Q. Do you understand that?

A. I don't get that.

Q. Do you want to leave the United States, Mr. Zydok, or do you want to live here?

A. I want to live here in this country.

Q. And, if you were released on bail, would you stay in this country?

A. I will.

Q. And comply with whatever order the Court made?

A. I will.

Mr. BROWN: You may cross-examine.

33 CROSS EXAMINATION.

By Mr. MURPHY:

Q. You say you are 54 years old, Mr. Zydok?

A. 54.

Q. And you have been here since 1913?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. And, so, you were in this country in 1914; is that right?

A. '14 or '13; I forgot.

Q. '14, '15, '16, and '17?

A. Yes.

Q. Were you in the Armed Services of the United States?

A. No, I wasn't.

Q. I see. And why did you leave Poland?

A. Why? I look for better living.

Q. Looking for better living. There was a war on in Europe at that time, is that right, or clouds of war were hanging over Europe?

A. That was just before the war.

Q. That was just before the war. So, you came to the United States. Did you ever make application for citizenship papers in this country?

A. I did.

Q. When was that?

A. I forget what year.

Q. What happened to them?

A. I make application in Rhode Island State, and I left Rhode Island and I forget until it was too late for me.

Q. Until it was what?

A. It was late. I have to apply again.

Q. Did you ever make final application? You say you filed your first papers in Rhode Island; is that it? You filed some papers in Rhode Island?

A. I just make application for it.

Q. Did you ever go through and attempt to get your final papers?

34 A. No, I didn't.

Q. You never did that?

A. No, I did not.

Q. When was that you made application in Rhode Island?

A. I forget the date and year.

Q. Approximately. Was it right after you got to this country?

A. It was between '20 and '30. Between 1920 and 1930, something like that.

Q. I see. You say you sold $50,000 worth of War Bonds?

A. Yes, I did.

Q. Is that right? When did you start selling those War Bonds?

A. When I worked in the restaurant I sold them to my customers in the restaurant.

Q. When was that?

A. I can't tell you the dates.

Q. Well, can you tell me, was it before or after Pearl Harbor? Do you remember when Pearl Harbor was bombed?

A. Yes. After.

Q. It was after that; is that right? The Federal Government had been selling Defense Bonds prior to that time, hadn't they, do you recall?

A. I don't know what you mean.

Q. Did you sell any bonds in this—any Government Bonds prior to the time Russia was invaded by the Germans?

A. I don't understand what you mean.

Q. You don't understand that. Was Russia invaded by the Germans?

A. I don't understand what you mean.

Q. You don't understand that. And, you don't know whether the Nazi Government attacked or invaded Russia or Poland?

A. Yes, I remember.

Q. You remember that?

A. Yes.

35 Q. Is that right? Had you sold any United States Government Bonds prior to that time?

A. I can't tell when it was.

Q. You say you are a waiter in a restaurant; is that right?

A. That is right.

Q. How long have you acted as a waiter in a restaurant?

A. The last 17 years, I think. I am not sure on dates.

Q. And in just one restaurant?
A. Two restaurants.
Q. Two restaurants. And what were the names of those two restaurants?
A. Detroit Workmen's Cooperative Restaurant.
Q. The what?
A. Detroit Workmen's Cooperative Restaurant.
Q. Detroit Workmen's Cooperative Restaurant. And where is that located?
A. In Hamtramck.
Q. Is that where you have been presently employed?
A. Right.
Q. What is your—do you have any position there other than that of waiter?
A. Head Waiter, that is all.
Q. You are the head waiter?
A. Head Waiter.
Q. Do you have any duties other than waiting on tables in connection with that restaurant?

(No response.)

Q. All you do is wait on table; is that it?
A. Head Waiter. I got to watch everything in the restaurant.
Q. You watch everything in the restaurant. By that you mean you are the manager of the restaurant?
A. Not really.
Q. Pardon?
A. Not really manager.
Q. Not real manager?
A. Not real manager.
Q. Who is the real manager?
A. Oh, they have got the other people.
36 Q. Well, who?

Mr. BROWN: I object to that as immaterial.
The COURT: You may take the answer.
A. I don't want to mention the other names.

By Mr. MURPHY, continuing:

Q. Pardon?
A. I don't want to mention the other names.
Q. You don't want to mention the other names. Why don't you want to mention the other names?
A. Well, the head of the committee, not the other manager, but the committee managers, both restaurants.
Q. The committee manages both restaurants; is that right?

A. That is right.
Q. Who is on the committee?

Mr. BROWN: I object to that as being immaterial and incompetent, and has no bearing in this proceeding.

The COURT: You asked him about certain patriotic actions he engaged himself in, so certainly Mr. Murphy has a right to inquire into other acts or other associttions to indicate whether or not his patriotism is a real patriotism, I would think. So, I would say the answer to the question is material.

Mr. BROWN: That may be true. I don't doubt that at all. But, has he a right to inquire who is manager, or who the owner is, or who the partners are in the corporation under which he works?

The COURT: Yes, I would say so. Go ahead.

A. Nick Polechuk,

By Mr. MURPHY, continuing:

Q. Who?
A. Polechuk.
Q. Polechuk. Will you spell that, please?
A. I can't spell no names. I can write if you give me a piece of paper.
Q. You write on this paper the names of the committee that manages that restaurant (handing a piece of paper to the witness.)
A. All the names?
Q. All the names.

(The witness thereupon wrote the following names on the piece of paper: N. Fich, N. Polechuk, H. Waitowich.)

37 Q. Do you have just three of them; is that right?
A. President, secretary and treasurer.
Q. All right. Who is the president?
A. Nick Fich.
Q. Nick what?
A. Nick Fich.
Q. Yes. And who is the secretary?
A. Nick Polechuk.
Q. And who is the treasurer?
A. Harry Waitowich.
Q. I didn't get that.
A. You can read.
Q. Can you pronounce it again?
A. Harry Waitowich.

The COURT: Has he identified the other restaurant, Mr. Murphy, by name? I just recall one.

By Mr. MURPHY, continuing:

Q. What is the name of the other restaurant?

A. Same name.

Q. Same name. And that is the Detroit Workmen's Cooperative Restaurant?

A. That is right.

Q. And where is that other restaurant located?

A. One on Yemans, 2934 Yemans, and one 9234 Joseph Campau.

Q. And do you act as head waiter for both of these restaurants?

A. One.

Q. And which one is that?

A. Joseph Campau.

Q. Joseph Campau. You say these three men, the names of which you have written on this paper, are the committee. Do they direct the operation and the policy of those restaurants?

A. Yes.

Q. Is that correct?

A. That is right.

Q. Who owns the restaurants?

A. A bunch of owners. I don't know how many, and I don't know their names. You have to go to the committee and find out
38 how many, because I haven't got nothing to do with the office.

Q. As a matter of fact, isn't it true that those restaurants are owned by the Communist Party of Michigan?

A. No, that is not true.

Q. They are not. Does the Communist Party of Michigan have anything to do with those restaurants?

A. No, they got nothing to do.

Q. They have nothing to do with them?

A. They got nothing to do.

Q. Do you know whether or not Mr. Fich, the president of those restaurants, is a member of the Communist Party?

A. I don't know.

Q. You don't know that. Do you know whether or not the man you have named as secretary is a member of the Communist Party?

Mr. BROWN: I object to that as incompetent, irrelevant and immaterial, as having no bearing at all upon this hearing and the testimony that this man gave on direct examination.

The COURT: I will take the answer.

Mr. BROWN: For the record, your Honor, may I have an exception after I am overruled, automatically?

The COURT: Yes, you may have that exception.

Mr. BROWN: Without so stating it.

The COURT: Yes.

Mr. BROWN: Thank you.

By Mr. MURPHY, continuing:

Q. Do you know whether the secretary whose name you have written on this paper is a member of the Communist Party?

A. I don't know.

Q. You don't know. Do you know whether or not he is awaiting deportation?

(No response.)

Q. Do you know whether or not there is a warrant of deportation issued for him?

A. Yes, I do.

Q. You know that, don't you?

A. I know that.

Q. And you know what he was charged with, don't you?

39 A. I don't know.

Q. You don't know that. And, what about Mr. Waitowich, the treasurer? Do you know whether or not he is a member of the Communist Party?

A. I don't know.

Q. You don't know that. How many children did you say you had?

A. Three.

Q. Three. Were those sons or daughters?

A. Two sons, one daughter.

Q. Two sons, one daughter. Did you say two of those sons fought in the Armed Services?

A. They were in the Army.

Q. Two of your sons?

A. Two of my sons.

Q. Now, have you ever been a member of the Communist Party?

Mr. BROWN: I object to that.

The COURT: Take the answer.

Mr. BROWN: On the ground that it may tend to be incriminating.

The COURT: Take the answer.

A. I can't answer that question.

By Mr. MURPHY, continuing:

Q. Pardon?

A. I can't answer that question.

Q. You say you refuse to answer that question?

A. I can't answer in order to incriminate myself.

Q. You say you refuse to answer that question because it might incriminate you; is that right?

A. That is right.

Q. Why?

Mr. BROWN: I object to that last question because it calls for a legal conclusion.

Mr. MURPHY: Well, he has made the statement.

The COURT: He is the one that is invoking the constitutional guarantee, and my understanding is he is the only one that can invoke it. I think Mr. Murphy has a right to inquire into his reasons for not answering the question.

He has given a reason, but Mr. Murphy certainly has a right, particularly in view of your direct examination,—in other words, Mr. Brown, you have by your direct examination established or attempted to establish this person in the category of a patriotic American citizen. Now, you can't leave that impression hanging in the air, and Mr. Murphy has a right to go at great length into the category that you have placed your witness in,—that of a patriotic citizen.

Mr. BROWN: Well, the major questions that must be determined by this Court are those set forth in the Potash case and reviewed by Judge Koscinski in his recent opinion.

The COURT: Just a minute, now. Don't get confused. I am not required to follow the decisions of other District Judges. There is nothing that I know of that requires me to follow the decision of a Court of equal jurisdiction.

I don't know what—I haven't read Judge Koscinski's opinion. I don't know whether the facts in the case he had before him are similar to the facts in the case I have before me, because, first, I don't know what the facts are in his case. I know a little something about it.

Second, I don't know all the facts in this case.

So, at this particular point in the proceedings I am giving no credence to any decision of any Court because I have not got all the facts before me yet.

But, I do know the rules of evidence, and I know you can't establish a person in the category of a patriotic citizen and then deny the opposition the right of cross-examination on that very point.

Mr. BROWN: I did it for the purpose of showing there were no acts of disloyalty in which he engaged.

The COURT: Then I am supposed to permit that testimony to remain as you adduced it from the witness and not permit Mr. Murphy to go in and develop anything he might on cross-examination?

Mr. BROWN: No. He has a right to cross-examine, but only by showing acts of disloyalty and disservice and disaffection.

The COURT: My offhand view is that that is what his efforts are directed toward, if you are listening to the same testimony I am.

Don't forget the Preamble in the front of the Act, the Preamble of this McCarran-Wood Act.

41 Go ahead.

By Mr. MURPHY (continuing):

Q. Now, you say, Mr. Zydok, that if you answer that question that it will incriminate you, is that right, and you are refusing to answer on that ground?

A. That is right.

Q. Now, why will it incriminate you?

A. I don't know how to explain it to you.

Q. Pardon?

A. I don't know how to explain it to you.

Q. Well, you say——

A. (Interposing): I don't understand.

Q. You say you don't know how to explain it. Why did you say it?

(No response.)

Q. Did somebody tell you to say it?

A. Nobody told me.

Q. — told you to say it. So, you say that it is going to incriminate you; is that right?

A. That is right.

Q. If you say it is going to incriminate you, you must know the reason why it will incriminate you; don't you?

A. Yes, I do, but I don't know how to explain.

Q. Well, have you done something through your actions that are a violation of law?

(No response.)

Q. You may recall now, my question is whether you were ever a member of the Communist Party?

A. I can't answer that question.

Q. Pardon?

A. I can't answer that question.

Q. You can't answer that question. And, is it because you don't know?

Mr. BROWN: I submit, if the Court please, he has already answered it. He refuses to answer it because it tends to incriminate him.

The COURT: I think there is another question in there: "Have you done something to violate the law?"

Is that the question, Mr. Murphy?

Mr. MURPHY: That was originally, your Honor. He said he did not know. I believe that was his answer.

42 The COURT: I did not know that he had answered that particular question. I don't think he has made an answer to it yet.

Mr. MURPHY: I will re-ask it, then.

By Mr. MURPHY (continuing):

Q. Have you done something? You say you don't want to answer because you might incriminate yourself. Is it because, then, that you have done something that may be a violation of law?

A. I don't know much about the law.

Q. You don't know much about the law. Well, you know enough to say that you don't want to answer because you might incriminate yourself, don't you?

Mr. BROWN: If the Court please, I object to that as being an ambiguous question, because the only question which he refused to answer was whether or not he ever was a member of the Communist Party.

The COURT: Oh, no. He said—the last answer was that, when Mr. Murphy asked him if he might have done something, might have violated the law, I believe his answer was that he didn't know; he doesn't know much about the law; or something to that effect. Now Mr. Murphy, I believe, is testing his credibility on his last answer.

That is what, I presume, your object is (addressing Mr. Murphy.)

Mr. BROWN: That last question was ambiguous because it doesn't refer to any act of his which might be violating the law, or whether it refers to the original question of whether or not he has ever been a member of the Communist Party.

The COURT: I think I follow Mr. Murphy to the extent he is trying to test the witness' credibility in relation to his answer that he does not know anything about the law.

Mr. BROWN: That is not my understanding of the question.

Mr. MURPHY: That is what it is directed to. This man said he doesn't want to answer because he may incriminate himself, and then he answers in the next breath that he doesn't know anything about the law.

The COURT: Now by your question you are testing the credibility of his answer.

43 On one hand the witness, under his own impulse, invokes his Constitutional right, and then in his next breath he says he does not know anything about the law, so obviously the interrogator has a right to go into the subject.

Mr. BROWN: It may be that the question was not propounded in such a manner that this witness can understand it.

Mr. MURPHY: Well, let us read the question again.

The REPORTER (Reading):

"Q. You don't know much about the law. Well, you know enough to say that you don't want to answer because you might incriminate yourself, don't you?"

Mr. BROWN: That is an ambiguous question because that question does not relate to whether or not he refused to answer the first question as to whether or not he ever had been a member of the Communist Party. If Mr. Murphy will reframe it, it will be a proper question.

Mr. MURPHY: I think it is proper right now.

The COURT: Go ahead.

By Mr. MURPHY (continuing):

Q. You know enough about the law to make the statement that an answer to my question might be sufficient to incriminate you; is that right?

A. That is right.

Q. You know that much about the law; right?

A. That is right.

Q. All right, Now what is it you have done or may have done that would incriminate you, that would be a violation of law?

Mr. BROWN: I object to that question, if the Court please, because it is highly improper for this reason: The United States Attorney is trying to get by indirection what he can't get by direct questioning. He cannot elicit an answer from a question which, if given, might incriminate him, so he turns the question around and says, "What did you do that you refuse to answer?" And, the Courts have upheld you cannot do that.

The COURT: I think that objection is well-taken.

By Mr. MURPHY (continuing):

Q. I will put it this way: Without asking you to disclose
44 what you may or may not have done, I will ask you if you have done something that would be a violation of law?

(No response.)

Q. Did you hear that question?

A. What was the last question you asked?

Mr. MURPHY: Will you read the question to him, please?

(The last question was thereupon read by the reporter.)

A. I don't know what I done against the law.

Q. You don't know that you have done anything against the law, do you?

A. I don't know.

Q. Pardon?

A. I don't know.

Q. You don't know. Then, I will ask you again whether you have ever been a member of the Communist Party?

Mr. BROWN: I submit, if the Court please, that he was asked the question previously and he gave the answer at that time that he refuses to answer on the ground it might incriminate him.

Mr. MURPHY: Well, I submit, if it please the Court, before he can invoke his Constitutional privilege on that ground, he has to make a showing that such an answer would incriminate him.

The COURT: I think you are right.

Mr. BROWN: The United States Attorney is taking advantage of the fact that this witness does not know too well the English language.

The COURT: There isn't—that hasn't been established in this proceeding as yet. The man came to this country in 1913. He has three children and five grand-children born in the country, and has for a great number of years been a waiter, a head waiter, in what, I presume, is an English-speaking restaurant. As far as I know, there is no proof to the contrary. And, so far at least——

Mr. BROWN (Interposing): Can your Honor not see from the demeanor of the witness on the stand, the way he talks, the way he answers, that he does not know too well the English language?

45 Mr. MURPHY: He had no trouble answering your questions, Mr. Brown.

Mr. BROWN: Maybe I put them more simply than you did.

Mr. MURPHY: Maybe you did.

The COURT: That is beside the issue. I haven't had exhibited to me, at least so far, the fact that this witness doesn't comprehend the English language.

Mr. BROWN: I didn't say that, your Honor. I said he doesn't understand it too well, because even on direct examination I had to repeat and simplify some of the questions, as you recall.

The COURT: Do you think we need an interpreter?

Mr. BROWN: I don't think so. I would suggest, in the interest of expediency, that the United States Attorney simplify his questions as much as possible in the language of this witness.

Mr. MURPHY: Well, I submit the question is very simple: Is he, and has he ever been, a member of the Communist Party.

I don't know how you can put it any simpler, Mr. Brown.

Mr. BROWN: I wasn't talking about that.

Mr. MURPHY: Well, that is the question that is up right now.

Mr. BROWN: The objection I made to that was that he answered it previously, and his answer stands now.

The COURT: I will take the answer.

A. I ain't going to answer nothing about the law.

By Mr. MURPHY (continuing):

Q. Pardon?

A. I am going to answer nothing about the law, because I don't know much about the law.

Q. I am not asking anything about the law, I am asking you if you ever were a member of the Communist Party.

Mr. BROWN: I submit, if the Court please, that this is objectionable for the following reasons: That the witness does not have to answer it in view of the fact that the McCarran-Wood Act is now the law of the land, and that under its provisions this man who is being charged with deportation in another proceeding, if he answers it, will be eligible for deportation.

46 Prior to the passage of the Act, he, in a deportation proceeding, could have admitted it and raised a Constitutional question as to whether or not membership alone would be sufficient to deport him. And, now, to ask him the question which, by virtue of the McCarran-Wood Act, would incriminate him, is certainly a violation of any Constitutional right that he may have.

The Court: After all, it is within his province to invoke his Constitutional right in that respect.

Mr. BROWN: That is right.

The COURT: And you can't invoke it for him.

Mr. BROWN: He has already invoked it.

The COURT: He qualified his answer by the subsequent statement that he had not, to his knowledge, been involved in any violation of any law, so what reason does he—what would incriminate him?

On cross-examination, he has made the statement that he has not been involved in any violation of law.

Mr. BROWN: Well, this, your Honor: If he says, "Yes, I was a member of the Communist Party at one time," that one question is sufficient to incriminate him now in this proceeding or in another proceeding which is now pending against him for deportation.

Mr. MURPHY: The Supreme Court has held in a deportation proceeding it is not a matter of incrimination. That is a civil proceeding. Certainly this man is seeking to invoke the aid of this Court in obtaining his liberty. And, one of the bases of making him deportable is the fact that he may or may not have been a Communist. And, as said in the Potash case, the probability of deportability is

one of the things that may be taken into consideration in determining whether or not the man shall be admitted to bail.

Now, he is the man that wants bail, and he is charged with being a Communist. If he wants to say he isn't a Communist, that is one question. I submit it is up to him to say it.

Mr. BROWN: Does the United States Attorney take the position that just because he has been a Communist at one time, that he, therefore, should not be given bail now? Is that your position?

47 Mr. MURPHY: What I am saying is that that is a ground of making him deportable.

The COURT: Go ahead.

Mr. BROWN: But this is not a deportation proceeding, your Honor.

The COURT: I know it is not.

Mr. MURPHY: That is one of the considerations the Court can take in mind.

The COURT: Go ahead and take the answer.

Mr. MURPHY: Read the question, please.

The REPORTER (Reading):

"Q. I am not asking you anything about the law. I am asking you if you ever were a member of the Communist Party?"

A. I can't answer that question.

By Mr. MURPHY (continuing):

Q. You can't answer that question. All right, I will ask you, Mr. Zydok, whether you are a member of the Communist Party?

Mr. BROWN: Objection.

The COURT: The objection is overruled. Go ahead.

A. I can't answer that question.

By Mr. MURPHY (continuing):

Q. You can't answer that question. Why?
A. I don't want to incriminate myself.
Q. You say your name is John Zydok?
A. That is right.
Q. Did you ever use the name of "John Son"?
A. I did.
Q. When did you use the name of John Son?

The COURT: Is that two names?

Mr. MURPHY: That is two names, John Son.

A. I forgot when I started. Some time in Detroit.

By Mr. MURPHY (continuing):

Q. Some time in Detroit?

A. When I came to Detroit.

Q. And when did you change back to the name of "John Zydok"?

A. Always I use my right name, but just call me, still me, my parents, my people's son.

Q. They just call you "Son"? And who calls you "Son"?

48 A. All my people who knows me.

Q. That is your Communist Party name, isn't it, "John Son"?

Mr. BROWN: I object to that as being an improper question.

The COURT: I will take the answer.

(No response.)

Mr. BROWN: I object on the further ground the question is ambiguous in that the question, as framed, says, "That is your Communist Party name."

The COURT: Well, it is the form of the question. Do you want to re-phrase it?

Mr. MURPHY: Yes.

By Mr. MURPHY (continuing):

Q. Is "John Son" the name by which you are known in the Communist Party?

Mr. BROWN: I object to that question, if the Court please, on the ground he has already refused to answer as to whether or not he ever was a Communist, on the ground it is self-incrimination, and that the United States Attorney by this means is, by indirection, trying to get in the same answer so that if an answer is given it will be an answer to a question which is objectionable on the ground of self-incrimination.

The COURT: I don't think so.

Mr. MURPHY: There is the man——

The COURT (Interposing): Go ahead. The question is proper. We probably all have names in the Communist Party, or will have before we are through.

Mr. MURPHY: Read the question back, Mr. Reporter.

(The last question was thereupon read by the reporter.)

A. No. Just people who knows, my customers, and everybody calls me "Son".

By Mr. MURPHY (continuing):

Q. Did you ever register in the Communist Party under the name of "John Son"?

Mr. BROWN: I object to that for the same reasons previously stated, that the United States Attorney is trying to get into the record by indirection what is definitely objectionable on the ground of self-incrimination.

49 The COURT: I seem to recall in your direct examination you asked certain questions that established this person as a person of good character. Now he has admitted the use of an alias, and I think Mr. Murphy most certainly has a right to inquire into the use of an alias on the part of this person, and what his object might be in using an alias.

Mr. BROWN: I didn't raise the question when he asked about the alias. I objected to the question when he asked about using that alias in the Communist Party, and, if he answers "yes", then he is not being protected by his Constitutional safeguards, and the United States Attorney is still trying to get into the record by indirection what he cannot definitely get in by direction.

Mr. MURPHY: I submit, I think this is the man that invokes his Constitutional rights, not you, Mr. Brown.

The COURT: I will take the answer.

Mr. MURPHY: Read the question to him, please.

The REPORTER (Reading):

"Q. Did you ever register in the Communist Party under the name of 'John Son'?"

A. I used to use my name "Son" just because my name "Zydok" not really my name. My name in Russia I can't read in English, write in English.

Mr. MURPHY: Will you read the question back to him, please?

(The last question was thereupon read by the reporter.)

A. No.

Q. You never did that; is that right?

A. That is right.

Q. Did you ever fill out an application form for membership in the Communist Party?

Mr. BROWN: I object to that for the same reasons stated before.

The COURT: The objection is overruled.

A. I can't answer nothing about Communist Party.

By Mr. MURPHY, continuing:

Q. Why?

A. I don't want to incriminate myself.

50 Q. You are familiar with the recent trial of certain members of the Communist Party in the City of New York?

A. I don't get your question.

Q. Do you know that 12 members of the Communist Party were tried in the District Court of New York recently?

The COURT: Was it 12 or 11?

Mr. MURPHY: 11 or 12. I was under the understanding it was 12.

A. I don't know much about that.

By Mr. MURPHY (continuing):

Q. Do you know anything about it?
A. I answered that. I don't know much about them.
Q. Do you know anything about it?
A. I heard; I read.
Q. You heard there was such a trial; is that right? Now, did you ever collect money to assist those people in their defense?

Mr. BROWN: I object to that question as being improper and immaterial. It is no crime or reflection on his character if he did collect money. The answer would not be material in helping the Court make its decision. I submit it is highly improper.

The COURT: I will take the answer. You brought out the fact, as I recall, he did sell War Bonds in the Second World War, and if he was engaged in the other type of activity it might be construed as a patriotic activity, it might be construed as an un-patriotic activity, or it might be construed as just an every-day activity of any law-abiding citizen, but that does not preclude Mr. Murphy from the right to inquire into it.

By Mr. MURPHY (continuing):

Q. Will you answer that question?
A. Repeat the question.

Mr. MURPHY: Will you read the question.

(The last question was thereupon read by the reporter.)

A. I don't think so.

By Mr. MURPHY (continuing):

Q. You don't think you did. Do you mean by that that you didn't?

(No response.)

51 Q. You mean you didn't collect any money for those?
A. I don't think so.
Q. Pardon?
A. I don't think so.

Q. You don't think that you did. Now, Mr. Zydok, you have testified before the Immigration and Naturalization Service, did you not, before Mr. Williams of that Service on May 25, 1949?

A. I did.

Q. Did you?

A. I did.

Q. I will ask you if you were asked this question and you made this answer:

"Q. When is the last time you attended a meeting of the Hamtramck Section of the Communist Party?

"A. In February——"

Mr. BROWN (Interposing): I object to that answer being read for the following reasons, and I object to this line of questioning from that transcript for the following reasons:

At the time that this hearing took place it was a hearing on a deportation warrant in 1949 prior to the passage of the McCarran-Wood Act. It was made at a time when it was not a crime to be a member of the Communist Party.

Since that time the law has changed. There is a strong Constitutional question as to whether or not that portion of the law, which makes membership in the Communist Party prior to the passage of the Act—whether that is good, or whether or not it is a Bill of Attainder and, therefore, bad. The United States Attorney is reading from a record which precedes the passage of that Act——

The COURT (Interposing): Which Act?

Mr. BROWN: The McCarran Act, the Internal Security Act of 1950. (Continuing with statement): —under circumstances which were entirely different than exist today. And for that reason, what was at one time not criminal, has today been made criminal and, therefore, it is not proper for the United States Attorney to bring into the record any admissions which this man voluntarily made in another proceeding to try to incriminate him in this proceeding.

Mr. MURPHY: I am simply trying to test this man's credibility. If he made a statement in 1949 to one effect, and makes one
52 today to another effect, certainly it may be incriminating but he is the man that is doing it.

Mr. BROWN: If the Court please, if you were to not place a limit upon what may be admitted in a hearing on a Writ of Habeas Corpus and not place reasonable restraints upon what kind of testimony may be admitted, what you would be doing, in effect, is this: You would be trying this man in this court for having at one time admitted he was a member of the Communist Party in a deportation hearing, and because he did admit that you are going to say, "Now, I am not going to admit you to bail, you are an unsavory character, you are dangerous to the welfare and safety of the United States."

That is what you would, in effect, be saying.

I submit, assuming everything the United States Attorney brings out is correct and true, that he did admit before the Immigration Department in 1949 that he was, that still would not make him ineligible for bail, because every one of these bail cases were cases of Communists and alleged Communists, and even in the deportation proceeding itself, the question is, "Is he a Communist," and, "Is he, as such, eligible to be deported."

Under the McCarran-Wood Act the answer is "Yes."

But, even if he were eligible for deportation, this Court would still have the right to grant or deny bail, and even if he did admit at one time he was a Communist is not material.

Going into the other question——

Mr. MURPHY (Interposing): Whether or not he is a menace or danger to the safety and security of the United States is very important.

Mr. BROWN: Going into the question of whether or not he will be available when the deportation hearing is had is very important.

Mr. MURPHY: Here is a man with reference to whom they say the Attorney-General abused his discretion in demanding bail, and I submit on the basis of this record, from what this man has said so far, regardless of whether he is a Communist or isn't a Communist, that the man was not telling the truth, and certainly we have got the right to determine that. And one of the ways of doing it is by seeing what he said a year ago and what he is saying today.

53 Mr. BROWN: A year ago, if the Court please, he may have admitted in the deportation hearing he was a Communist; 6 months ago he may have admitted in the deportation hearing he was a Communist; in the new hearing he may have admitted he was a Communist.

Despite those admissions, the Attorney-General still admitted him to bail on his own discretion. What change has there been, except the passage of the McCarran-Wood Law, what change has there been, except his conduct, which should not admit him to bail?

Mr. MURPHY: I will tell you one thing that has changed, and that is that the man has perjured himself on the stand. That is one thing.

The COURT: I will take the answer.

By Mr. MURPHY (continuing):

Q. I will ask you again if you were asked this question and made this answer:

"Q. When is the last time that you attended a meeting of the Hamtramck Section of the Communist Party?

"A. In February or March, something like that. After that, no meetings because somebody out of Hamtramck, somebody work."

Do you remember being asked that question and making that answer?

A. I don't answer nothing about Communist Party.

Q. You answer nothing about Communist Party. I am not asking you about the Communist Party; I am asking you if you were asked that question and whether you made that answer on May 25, 1949, before the Immigration and Naturalization Service.

Mr. BROWN: If the Court please, I submit that this line of questioning is not proper, not correct, for the following reasons: He has not denied that he is a member of the Communist Party. He has refused to answer whether he was at one time a member of the Communist Party for the reasons that have been discussed here. And, not having denied it, the question of credibility cannot arise.

Mr. MURPHY: He has denied he collected any funds for the Communists in New York, for their trial, and I propose to show
54 that he did, and that he admitted he collected them, and it certainly goes to his credibility as a witness here.

The COURT: Go ahead.

By Mr. MURPHY (continuing):

Q. Do you recall being asked that question and making that answer?

Mr. BROWN: I also submit, if the Court please, another objection, namely, that the purported transcript of the record from which the Attorney-General is cross-examining and trying to impeach the witness was taken at a time prior to the passage of the—prior to the determination in the United States Supreme Court of the case which held that all deportation hearings held in violation of the Administrative Procedures Act were unlawfully held, and required the Immigration Department and Naturalization Service to start all over again and re-try their cases.

Therefore, any testimony that was had during that time under a void procedure, to which objection was made by myself as Mr. Zydok's attorney, is improper and not a proper subject for impeachment.

Mr. MURPHY: The question is whether or not this man made those statements, I submit, your Honor; not as to whether or not the hearing was valid or what it was.

The COURT: I will take the answer.

By Mr. MURPHY (continuing):

Q. Will you answer that question, please?

A. What question was it?

Q. I will re-read it. This is the question. I am asking you

whether you remember whether this was asked of you and whether you made this answer:

"Q. When is the last time that you attended a meeting of the Hamtramck Section of the Communist Party?

"A. In February or March, something like that. After that, no meetings because somebody of out Hamtramck, somebody work."

Now, do you recall being asked that question and making that answer?

A. So it was making answer, no?

Q. Pardon?

A. So it was making answer, no?

Q. Did you make that answer?

55 A. I don't get what is what.

The COURT: What was the answer?

Mr. MURPHY: "I don't get what is what."

By Mr. MURPHY (continuing):

Q. Do you recall being asked that question that I read to you and making the answer that I read to you?

A. I don't remember what kind of questioning was asked.

Q. You don't remember the question and you don't remember the answer; is that it?

A. That is right.

Q. All right. Do you recall being asked this question:

"Q. Was this meeting held at the Yemans Hall?

"A. Yes."

Do you recall being asked that and making that answer.

A. I don't understand what you mean.

Q. I will ask you if you recall this: Do you recall whether, on May 25, 1949, before the Immigration and Naturalization Service, at a hearing there, you were asked:

"Q. Was this meeting held at the Yemans Hall?"

Do you remember anybody asking you that?

A. I don't.

Q. You don't?

A. I don't.

Q. Do you recall whether or not you answered that question if such a question was asked?

A. If I didn't remember it was asked, how can I remember——

Q. (Interposing:) You don't remember how you answered it if a question like that was asked; is that right?

A. I don't remember.
Q. Do you remember this question being asked of you:

"Q. Have all of your meetings being held in Yemans Hall in Hamtramck?"

Do you remember that question being asked?
A. No. There was a hundred questions. I don't remember now.
Q. You don't remember the questions?
A. No.
56 Q. And, if you don't remember, you don't recall that you answered "Yes"?
A. Maybe. I don't know.
Q. Maybe you did and maybe you didn't; is that right?

(No response.)

Q. Do you recall being asked this question:

"Q. What was discussed at the last meeting of the Hamtramck Section that you attended?"

Do you remember being asked that?
A. No.
Q. Pardon?
A. I don't remember.
Q. You don't remember that. Do you recall whether you made this answer:

"A. We just discussed about that case in New York of the 12 Communists and we discussed the Chinese situation and then to collect money to help that case in New York, that's all we discussed."

Do you recall telling the Immigration Inspector that?
A. I don't remember.
Q. You don't remember?
A. I don't remember no questions.
Q. Do you remember being asked this question:

"Q. Who told you to collect money for this case in New York"?

Do you recall being asked that?
A. I don't remember.
Q. Do you recall making this answer:

"A. The District Committee."

A. I don't remember.
Q. You don't remember that?

A. I don't remember.
Q. Then the question:

"Q. By letter?"

And the answer:

"A. No, personally."

57 Do you recall either that question or that answer?
A. I don't remember any such questions.
Q. Do you recall this question:

"Q. A man from the District Headquarters came to your meeting?
"A. No, just a letter."

Do you recall being asked that question and making that answer?
A. I don't remember any such questions.
Q. You don't remember?
A. No.

Q. Do you remember this question?

"Q. Who was that letter from?"

A. I don't remember.
Q. You don't remember that. Do you recall making this answer:

"A. I think it was from New York to our office here and they sent it to us in Hamtramck."

Do you remember making that answer?
A. No, I don't.
Q. You didn't make that answer?
A. I don't remember.
Q. Pardon?
A. I don't remember.
Q. You don't remember making that answer. And, if you did make that answer, would it be true?
A. I don't remember whether I did or not.
Q. If you did, would that be a true statement?

Mr. BROWN: I object to that as being an improper question. It is an improper question.
The COURT: He says he doesn't remember if he made the answer, if I remember correctly.
Mr. BROWN: Yes, but the question is——
Mr. MURPHY (Interposing): I will withdraw the question.
The COURT: All right.

By Mr. MURPHY (continuing):

Q. Following that question, following that answer, do you recall whether or not this question was asked of you:

58 "Q. You mean the letter was from the Communist Party Headquarters in New York?"

Do you recall being asked that question?
A. I don't remember.
Q. And do you recall making this answer:

"A. That's right, it was from New York."

Do you recall making that answer?
A. I don't remember.
Q. Pardon?
A. I don't remember.
Q. (Reading):

"Q. How many persons usually attend the meetings of the Hamtramck Section?"

Do you recall being asked that question?
A. I don't remember that.
Q. You don't remember that. Do you recall making this answer:

"A. That's a Party Secret. I think it better I'm not going to mention how many and their names and I don't want to be a stool pigeon on the Party."

Do you recall making that answer?
A. I don't remember about those questions.
Q. Pardon?
A. I don't recall about those questions.
Q. You don't remember those. I will ask you now, then, whether after hearing those questions and those answers that I have read to you, whether or not it helps your memory any so that you could tell us now whether you collected any money to assist the Communist trial in New York?

The COURT: To assist in the defense of the Communists——
Mr. MURPHY (Interposing): To assist in the defense of the Communist trial.
The COURT: On trial, you mean?
Mr. MURPHY: Communists on trial at New York.

A. I think no.

59 By Mr. MURPHY, continuing:

Q. Pardon?
A. I think no.
Q. You say that you did not?
Mr. BROWN: He didn't say that. He says he thinks no.

By Mr. MURPHY, continuing:

Q. What do you mean, you think no?
A. I know some money was collected—not exactly where the money goes, so I don't know whether I collect or not such a money.
Q. You say you did collect some money? Is that what you say?
A. Yes.
Q. And what did you collect the money for?
A. I forget for what? That was a long time ago.
Q. Why were you out collecting money?
The WITNESS: What the question was?

(The last question was thereupon read by the reporter.)

A. How can I answer how if I forget? Maybe I collect someone, sometime. I forget which, and why, and when.
Q. You mean you make a practice of collecting money?
A. I didn't get your question.
Q. Do you engage in the collection of money generally?
A. What does than mean, "engage"?
Q. Do you do it? Do you go out and collect money? Is that your business?
A. My business to work in restaurant. That is my business.
Q. You say that you collected money. I gathered that you are regularly collecting money. Now, is that true?
A. I am true I was collecting money, but I don't remember when and for what.
Q. You say you did collect some money. And when did you collect money?
A. I can't tell you no dates.
Q. What do you mean, you can't tell me any dates?
A. I got no kind of paper with me in order to——.
Q. (Interposing): Was it a year ago?
A. Maybe a year, maybe five, maybe ten. I don't know.
Q. You don't know when it was?
A. When it was.
Q. One year, five years or ten years.
60 A. That is right.
Q. Would it be twenty years?
A. Maybe.
Q. Pardon?

A. Maybe.
Q. Maybe. And who did you collect the money from?
A. How can I answer who if I say I forgot maybe I collect or not?
Q. You are the fellow that collected it.
A. I don't want to make the statement because I don't get no answers. I was collecting sometime for funerals, sometimes for someone sick, or something.
Q. So, you collected money on more than one occasion; is that right?
A. That is right.
Q. Many times, is that right?
A. Many times, yes.
Q. But you say it has only been for funerals?
A. I was collecting money for when I was sell the Bonds. Somebody pay $5.00, $10.00, $15.00, and so forth.
Q. What did you do with that money?

The COURT: What was the money?
Mr. MURPHY: Bonds.

A. Buy Bonds, the people.
Q. You turned that money over to whom?
A. Over to where I buy the Bonds.
Q. Well, who?
A. One time it was on WJBK Radio Station, and sometime in the bank.
Q. I see. So that when you collected money for Bonds, you either turned it over to the radio station or over to a bank; is that right?
A. Yes.
Q. And you got Bonds?
A. That is right.

The COURT: Which bank did he give it to?

By Mr. MURPHY, continuing:

Q. What bank did you give it to?
A. The Bank of Hamtramck. I forgot how you call.
Q. That was in 1941, I believe; is that right? Or when was that?
61 A. I don't know about the dates.
Q. Well, how can I tell how long ago if I can't tell the dates?
Q. You have no recollection? A year, two years, ten years?
A. If I go home and get some kind of note.
Q. You have no idea now?
A. No idea.

Q. You haven't any idea. How many Bonds have you sold since 1945?

A. I sold all around $50,000. I don't know which days, since when until when.

Q. Well, since the war ended in Europe and in Japan, how many Bonds have you sold?

A. I sold—I don't know when, the dates.

Q. Was it before or after the end of the war in 1945?

A. I don't know the dates.

Q. Do you know whether it was before the end of the war? Before or after?

A. It was during the war, I think so.

Q. During the war. Since then, you haven't sold any?

A. No. Maybe—I don't know.

Q. Have you sold any since we become engaged in fighting in Korea?

A. I don't remember when I did.

Q. You don't remember when. Getting back to the collection of this money, you say you collected, now, for the Bonds and you turned that money over to the bank and to the radio station; and, the funeral money, who did you turn that over to?

A. To the people who was charging the funeral.

Q. I see.

The COURT: I believe I have to take a jury return, Mr. Murphy. Will you excuse us for just a few minutes? We will take a ten-minute recess.

(A recess was thereupon taken.)

The COURT: It is five minutes after four now. We can adjourn this case now, if you want, in view of the fact the other case I had set for tomorrow is settled.

Mr. BROWN: I would rather adjourn until tomorrow.

The COURT: How about you, Mr. Murphy? Is that all right?

62 Mr. MURPHY: That is agreeable.

The COURT: We will recess this matter until tomorrow morning at nine-thirty; that is, the hearing on the Writ.

Mr. BROWN: Nine-thirty.

(An adjournment was thereupon taken until 9:30 o'clock A. M., Wednesday, November 8, 1950.)

Detroit, Michigan,
Wednesday, November 8, 1950
9:30 o'clock A. M.

(The hearing was resumed pursuant to the adjournment.)

ZYDOCK, JOHN, the Petitioner herein, thereupon resumed the stand as a witness in his own behalf, and having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION (continued).

By Mr. MURPHY:

Q. Since court adjourned, Mr. Zydock, have you had any further opportunity to refresh your recollection as to whether or not you collected any money for the defense of the 11 or 12 Communists on trial in New York City?

A. No.

Q. You haven't thought any more about it?

(No response.)

Q. Have you attempted to refresh your recollection on that point?

A. No.

Q. You haven't. You haven't thought about it, then, since we left here last evening; is that right?

A. That is right.

Q. Well, I will ask you now, then Mr. Zydok, whether you did collect any money for the defense of the 12 or 11 Communists on trial in New York City?

A. No.

Q. You did not. Now, I will ask you whether you recall being asked this question and making this answer on May 25, 1949,
63 before the Immigration and Naturalization Service:

"Q. What office do you hold in the Communist Party of Michigan at the present time?"

Do you recall being asked that question?

A. I don't remember.

Q. (Reading):

"A. Financial Secretary in the Hamtramck Section."

Do you recall whether or not you made that answer?

A. I don't remember.

Q. Do you recall whether or not you ever told that to anyone?

A. I don't remember.

Q. Did you ever tell anybody that you were the Financial Secretary of the Hamtramck Section of the Communist Party of Michigan?

A. I don't remember.

Q. You don't remember ever telling anybody that; is that right?

A. That is right.

Q. Do you recall being asked this question:

"Q. How long have you been the Financial Secretary?"

Do you recall being asked that question?

A. I don't remember.

Q. (Reading):

"A. For just this year."

Do you recall making that answer?

A. I don't remember.

Q. And did you ever tell anyone that you had been Financial Secretary for just that part of the year?

A. I don't remember.

Q. I will ask you whether you recall whether you were asked this question:

"Q. When were you elected?"

Do you recall being asked that?

64 A. I don't remember.

Q. (Reading):

"A. In January, just after the first of the year."

Do you recall making that answer?

A. I don't remember.

Q. Did you ever tell anyone that you had been elected in January of 1949 to the office of Financial Secretary for the Hamtramck Section of the Communist Party?

A. I don't remember.

Q. Do you recall whether or not you were asked this question:

"Q. What other funds do you collect besides the dues?"

Do you recall whether or not you were asked that question?

A. I don't remember.

Q. (Reading):

"A. No kind of funds. I collected for the trial of the 12 Communists in the New York case."

Do you recall making that answer?

A. I don't remember.

Q. Is it possible that you did make that answer?

A. No, because I don't remember.

Q. Is it possible that you told a Hearing Examiner of the Immigration and Naturalization Service:

"I collected for the trial of the 12 Communists in the New York case"?

A. I don't remember.

Q. Well, I am not asking you whether you remember it. I am asking you whether it is possible that you told them that?

A. I can't tell if it is possible.

Q. Pardon?

A. I can't tell if it is possible.

Q. You can't tell whether it is possible? Why can't you tell?

(No response.)

65 Mr. BROWN: I submit, if the Court please, that that question is argument with the witness.

The COURT: I will sustain the objection.

By Mr. MURPHY, continuing:

Q. I will ask you if you recall whether this question was asked of you:

"Q. How much money did you collect for this purpose?"

Do you recall being asked that answer?

A. I don't remember.

Q. You don't remember. And, is it possible that you might have made that answer?

The COURT: You mean "asked that question."

By Mr. MURPHY, continuing:

Q. Or that you might have been asked that question?

A. I don't remember.

Q. You don't remember anything about it. I will ask you if you made this answer:

"A. Something over $100."

Do you recall making that answer?

A. I don't remember.

Q. You don't remember?

A. I don't remember.

Q. And, when you say you don't remember, do you mean by that that it is possible you did make that answer?

A. Well, I am not—if I don't remember, I can't tell possible or not.

Q. You say you don't remember. And, by that do you mean to say that you did not collect $100?

Mr. BROWN: I object to the form of that question as being improper.

The COURT: What is improper about it, Mr. Brown?

Mr. BROWN: He said he doesn't remember, and the question was asked, "By that do you mean it is possible that you did not collect $100."

The COURT: He certainly has a right to continue his cross-examination in an effort to ascertain just what the witness does mean by his answer. Possibly he is trying to refresh his recollection.

Mr. MURPHY: Will you read my last question, Mr. Buckley?

66 (The last question was thereupon read by the reporter.)

A. I didn't say I didn't collect. I say I don't remember.

By Mr. MURPHY, continuing:

Q. You say that you did not say that you didn't collect $100; is that right?

A. That is right.

The COURT: He said, "I didn't say that I didn't collect $100, but I said I don't remember."

That is what I think the full import of his answer was.

By Mr. MURPHY, continuing:

Q. Well, to assist myself in clearing that up, do you mean, then, that it is possible or that you may have collected $100 for this trial in New York?

A. If I don't remember, how can I answer?

Q. What is it you don't remember, whether you made these answers or whether you collected the money?

A. I don't remember collecting the money or nothing.

Q. You don't remember collecting any money?

A. No.

Q. And you don't remember making these answers?

A. I don't remember.

Q. Now, I will ask you, Mr. Zydok, that if you did make the answers to the questions that I have asked you, were they true or false?

A. Well, I don't remember I answered or not.

Q. You mean you don't remember whether they are true or false; is that what you mean?

A. I said I didn't remember I answered those questions or not.

Q. Well, I am asking you that if they were made by you, if the answers were made by you, were they true or were they false?

Mr. BROWN: I submit, if the Court please, that question is objectionable on the ground it is speculative. He has already testified he does not remember making the answers, or the questions being asked. Now, the next question asked after that by the United States Attorney is improper for impeachment purposes.

The COURT: He has said this, Mr. Brown, that he does not remember whether he was asked those questions and made those answers. Now, he hasn't said that he did not make them. So Mr. Murphy, I think, has a right to presume that he either made
67 them or did not make them, by his answer. He isn't definite in his answer, so, if he isn't definite in his answer, Mr. Murphy, acting under the provisions of proper cross examination, has a right to try and develop just what the man does mean by his answers.

Mr. BROWN: Yes. But, if the Court please, the United States Attorney is asking this question: After he says he doesn't remember, the United States Attorney then asks him this question, "By that do you mean that you did collect or did not collect?"

The COURT: Yes; because the witness has said that he does not remember whether he did it or not. That is his answer. Mr. Murphy has a right to interpret that answer as that he may have been asked these questions.

Mr. BROWN: Without trying to argue to the Court, I think that the proper way of doing it, if I may suggest it, is this:——

The COURT (Interposing): All right.

Mr. BROWN (Continuing): —"Do you now remember whether or not you did collect?" And, if that differs from the testimony——

The COURT (Interposing): He has asked that question and got his answer to it. He doesn't remember whether he did or didn't.

Mr. MURPHY: It is a very simple matter, it seems to me, for this man to know whether or not he was telling the truth when he testified before a Hearing Examiner, and that is all I am asking him.

Will you read the last question, Mr. Buckley?

The Reporter (Reading):

"Q. Well I am asking you that if they were made by you, if the answers were made by you, were they true or were they false?"

A. If I don't remember, I can't answer, because it might be true and it might be lies.

By Mr. MURPHY, continuing:

Q. It might be true or it might be false; is that right?

A. That is right.

Q. Now, following that out, then, Mr. Zydok, is it your practice to tell untruths?

68 A. Not in court.

Q. Not in court. You mean not in here you wouldn't falsify your testimony. Would you falsify or tell untruths somewhere else?

A. Well, I don't remember.

Q. I am not asking you whether you remember. I am asking you whether you would falsify testimony in a place other than a courtroom?

A. Well, everybody I meet on the street I don't have to say all the time the whole truth.

Q. Were you on the street when you testified before a Hearing Examiner of the Immigration and Naturalization Service?

A. Where the hearing was, I don't remember.

Q. I am not asking you whether you remember. I am asking you whether it was on the street.

A. I don't get your question.

Q. You said you might tell an untruth or you might not have to tell everything to somebody that you met on the street. Isn't that what you said before?

A. That is right.

Q. All right. Now, I am asking you if your examination before the Immigration and Naturalization Service was on the street?

A. No.

Q. It wasn't. Then, I will ask you again, would you tell the truth there or would you falsify your testimony there?

A. Well, I don't remember.

Q. What do you mean, you don't remember? I am asking you what you would have done. Would you tell the truth or wouldn't you tell the truth?

A. That is what I mean, I don't remember——

Q. (Interposing): You mean you don't know whether you told the truth or whether you told a falsehood; is that what you mean?

A. To answer that question I should remember all the questions and answers, but I don't remember them and I don't remember how to answer them.

Q. Do you have to know the questions and answers before you know what your practice is as to truth and veracity?

69 A. I practice to answer truth.

Q. Pardon?

A. I practice to answer truth.

Q. You practice to answer truth; is that right?

A. That is right.

Q. So that if you testified to certain facts before the Immigration Service, that was the truth you were telling; is that right?

A. I don't remember whether it was.

Q. You mean you don't remember whether you told the truth?

A. I don't remember.

Q. And it is possible, then, that you falsified; is that right?

A. I can't tell. I don't remember.

Q. Well, I am asking you. What is your practice, to tell the truth or to falsify?

Mr. BROWN: If the Court please, he is arguing with the witness. He has already testified his practice is to tell the truth.

Mr. MURPHY: But he qualifies it by saying he doesn't remember.

Mr. BROWN: He says he doesn't remember what the questions were and what the answers given were.

Mr. MURPHY: I submit that is not what he said. He says he doesn't remember whether he told the truth.

I think, Mr. Brown, it is very clear the witness is just being evasive and is deliberately trying to avoid answering the questions.

The COURT: Well, I will take the answer.

(The last question was thereupon read by the reporter.)

A. I answered it. I practice to answer truths.

Q. You practice to answer the truth. So, then, I will ask you if, when you testified before the Immigration and Naturalization Service, you told the truth?

A. I don't remember those questions and answers.

Q. That isn't what I am asking you. I am asking you whether you told the truth there.

A. How can I answer if I don't remember what it was?

70 Q. Do you again say that it is possible you didn't tell the truth?

A. Well, I don't know.

Q. You don't know. But, it is possible, you say, that you didn't tell the truth?

A. I afraid if I forgot something which they was questioning me and answering, questions which I forgot, maybe I answered not right.

Q. I am not asking you about questions you forgot. I am asking you about questions you answered.

A. If I answer you that question in the way that you ask me, it would be true and maybe it is not.

Q. What do you mean, it may be true and it may not be true?

A. Because I told you maybe the question was forget in trying to answer, and did answer it, and maybe it wasn't right.

Q. Now, Mr. Zydok, you are the man that knows, are you not, whether you told the truth or whether you didn't tell the truth; isn't that right?

A. I answer that, but I don't know how to answer that.

Q. In other words, aren't you the man that knows whether you told the truth or whether you didn't tell the truth? Is there anything difficult about that?

A. If anybody asks me like that, something I have to answer, which I don't know questions, sometime I can't answer.

Q. I am asking you about yourself. I am asking you whether you know whether you told the truth. Now, you are the person that knows that, aren't you?

A. I forgot all about it.

Q. I am not asking you whether you forgot. You mean you forgot whether you told the truth?

(No response.)

Q. Is that what you mean?

A. I think I answered that question. I don't know. I can't think now how to answer it any other way.

Q. I am just asking you whether you told the truth before the Immigration and Naturalization Service on May 25, 1949.

A. If you force me to answer, and I forget something——

71 Q. (Interposing): I am not asking you to tell me something you forgot. I am asking you to tell me whether you told the truth. You certainly ought to be able to tell me that. You are the person that does know.

A. There was questioning, a couple of hundred questions. How can I remember them, what was the question and what was answered?

Q. I will go back again. Is it your practice to falsify answers before the Immigration Service?

A. No, it isn't.

Q. So, you tell the truth and did tell the truth to the best of your ability?

A. All the questions which I remember, I answered truth.

Q. All the questions, then, that you answered were true questions; is that right?

A. Which I remembered.

Q. What do you mean, which you remembered? If you answered, then you remember.

A. If you force me to remember to answer, maybe I forget something. I have to, but you force me.

Q. I am not forcing you to do anything. I am asking you, if your answered a question before the Immigration Service, was it truthful or was it false?

Mr. BROWN: I submit, if the Court please, he has already answered that question several times. The last time he answered it was very definite that if he answered it was truthful.

Mr. MURPHY: If he didn't forget.

The COURT: I thought he answered all the questions he remembers he answered truthfully.

Mr. BROWN: Yes.

The COURT: I thought that was the answer.

Mr. MURPHY: Then he again qualified it, your Honor, by saying, if he didn't forget.

Mr. BROWN: The testimony would show which questions he forgot and which questions he remembered by those answers he gave.

Mr. MURPHY: I am asking him, Mr. Brown. I submit he has qualified his answer.

72 Mr. BROWN: He hasn't qualified it. He says those answers which he gave were truthful.

Mr. MURPHY: If he remembered. If he remembered.

The COURT: Go ahead, Mr. Murphy.

Q. (By Mr. Murphy, continuing): I will ask you again, Mr. Zydok, whether or not the answers that you made to the Immigration and Naturalization Service, if you answered the questions, were they true or—were your answers true or were they false?

A. I can't find no more words to answer that question.

Q. Don't you know whether your answers were true or false? And, I am speaking now of questions you answered.

(No response.)

Q. Why do you keep looking at Mr. Brown all the time? You were looking at Mr. Brown; you constantly have to look at Mr. Brown every time I ask you a question. Why do you do that?

A. I didn't look at Mr. Brown.

Q. You didn't look at Mr. Brown?

A. No.

Q. I see. All right. You can answer the last question now.

Mr. BROWN: I submit, if the Court please, he is be-laboring the witness. The witness already testified——

The COURT: (Interposing): I have reached a very definite conclusion, Mr. Brown, that this witness is extremely evasive in his answers, extremely so.

Mr. BROWN: He has good reason to, your Honor.

The COURT: He hasn't good reason to be evasive. There is never a good reason to be evasive in any court, and nobody can condone evasiveness in any type of litigation. And, because he is evasive, the examination of him by Mr. Murphy is difficult.

Mr. BROWN: May I have a recess for a couple of minutes? Perhaps the witness——

The COURT: (Interposing): No. I don't think it is necessary to have a recess, because we had a recess from last night, and his tactics today are completely different than they were yesterday.

Today he is a symphony of "I don't remember, I don't remember, I don't remember."

73 Mr. BROWN: I think we can simplify it if you give me a recess, because I think this, your Honor: I think he is quite concerned about the fact that under the passage of the new law—and this point was argued yesterday—that certain admissions he may have made previously before the Immigration Service may now be held against him, and at that time it was not criminal to be a member of the Communist Party. Now it is. And he is quite concerned about that. And I think it is unfair for Mr. Murphy——

The COURT (Interposing): I have no knowledge of the fact that it is criminal now to be a member of the Communist Party.

What is the sponsorship of that statement?

Mr. BROWN: The McCarran-Wood Law.

The COURT: Criminal?

Mr. BROWN: Well, yes.

Mr. MURPHY: Makes it a crime to be under the McCarran-Wood Law?

The COURT: I wasn't conscious of the fact—

Mr. BROWN (Interposing): It makes persons who are members of the Communist Party as of February, 1950, just about criminal.

Mr. MURPHY: What do you mean, "just about"? Is it an offense under that Act to be a Communist, a criminal offense?

The COURT: This is a civil proceeding that we are engaged in here, and it is under the provisions of the Act, so even though your conclusion is that a Communist is a criminal, why, it certainly has no bearing on this particular proceeding because it is a civil proceeding.

Mr. BROWN: But, the issue before this Court is whether or not this man is to be enlarged from bail even if he had admitted——

The COURT (Interposing): The issue here is not whether or not this man should be enlarged from bail. You agree the issue is whether or not the Attorney-General of the United States has abused his discretion.

Mr. BROWN: That is correct. That is the issue. And there are certain factors that are involved to determine whether or not he did abuse his discretion.

74 The COURT: This is one of the factors, however, I would say. If I am to appraise the discretion used by the Attorney-General, I certainly, in my review of that exercise of discretion, I would like to know something about the party that is in the controversy, and that is this subject here, Mr. Zydok.

Mr. BROWN: Well, to show the good faith of myself as an attorney, and Mr. Zydok, I would have no objection whatever to you reading the testimony in that hearing before the Immigration Service.

The COURT: Well, unfortunately, I don't have any right to probe through private papers of either litigant. I can't go down and go through your files and say, "I would like to have that;" or go over to Mr. Murphy's files and say, "I would like to have that."

The only thing I have before me is whatever exhibits are offered in the course of the litigation, and up until now, why, I don't have anything. So, what method the Government intends to pursue, what method you intend to pursue, is a matter that is purely within yourself.

Mr. BROWN: But, here is the situation. He is trying to discredit and impeach the witness. He is trying to do that on testimony he gave before the Immigration Service in deportation proceedings in May, 1949.

The COURT: I don't know. This may be an indirect way of letting me know of certain information that the Attorney-General of the United States had, because I think I can take judicial notice of the fact, I will and do—that the Immigration and Naturalization Service is a branch of the Department of Justice, and I am further empowered to take judicial notice of the fact that the Attorney-General of the United States is head of the Department of Justice.

Now, if this is the type of file that—the type of report that he is using in his interrogation of this witness, then I know it is part of the files and records of the Department of Justice and it must be information that was in the possession of the Attorney-General.

Mr. BROWN: Well, I have no objection to your reading that file; I have no objection to you seeing the transcript of that testimony.

75 The COURT: Let me have it, then.

Mr. BROWN: I haven't got it. The United States Attorney has it. This was an official hearing, open to the public, and in the practice over there the attorneys are given copies of the transcript.

The COURT: Let me have your copy and I will read it.

Mr. BROWN: I don't have it here. I am reasonably sure I have it at the office, and I will be very glad to turn it over to you.

Mr. MURPHY: I might tell the Court, we propose to offer the copy.

The COURT: All right, when it is offered, I will have a chance to read it.

Mr. MURPHY: May we have the last question, Mr. Buckley?

The REPORTER (Reading):

> "Q. I will ask you again, Mr. Zydok, whether or not the answers that you made to the Immigration and Naturalization Service, if you answered the questions, were they true or —where your answers true or were they false?"

A. I did answer which question I am a Communist—I answer the truth. But it was first time for me, and maybe I answer questions which they ask and I am a member, and ask them, that was maybe true and maybe false.

Mr. MURPHY: Now, just a minute. Would you re-read the last part of that answer?

(The last answer was thereupon read by the reporter.)

Q. (By Mr. Murphy, continuing): To follow that out, then—I don't know whether I understood you, Mr. Zydok—but this is the inference, the impression I got, that maybe you told the truth in answering some questions and maybe you told falsehoods; is that right?

A. That is right.

Q. You don't know, then, whether you told the truth?

A. I don't.

Q. Or whether you falsified your testimony; is that correct?

A. I forget; that is why I don't want to answer now which questions I don't remember.

76 — Q. That is why you now don't want to answer any questions you don't remember?

A. That is right.

Q. Well, I will again ask you, is it because you don't remember whether you told the truth before the Hearing Examiner or whether you falsified your testimony and that you now say you don't remember? Is that what you mean?

A. I didn't get that question.

Q. Strike the question. I will ask you this question again, Mr. Zydok:

(Reading):

"From whom did you collect this money, John?"

Do you recall that question being asked?

A. I don't remember.

Q. And do you recall making this answer:

"A. Well, don't expect me to give the names, that I'm not going to do because I'm not going to be a stool pigeon on the Communist Party. From the members of the Communist Party."

Now, did you make that answer?

A. I don't remember.

Q. You don't remember whether you did or whether you did not; is that right?

A. That is right.

Q. I will ask you again, then, whether or not you collected any money from members of the Communist Party for the defense of the 12 Communists in New York?

A. I don't remember collecting.

Q. You don't remember collecting any money; is that right?

A. That is right.

Q. So, then, if you were asked this question and made this answer, the answer I just read to you, to the Hearing Officer, would that be a true or a false answer that you made at that time?

A. I don't remember no questions and answers. Maybe false and maybe true.

Q. It might be false and it might be true; is that right?

A. That is right.

77 Q. And that is just the way you would answer a question?

Mr. BROWN: I submit that that last question is objectionable as being argumentative.

The COURT: I will sustain the objection.

Q. (By Mr. Murphy, continuing):

"Q. To whom did you send this money?"

Do you recall being asked that?

A. I don't remember.

The COURT: When was this hearing, by the way?

Mr. MURPHY: This was in 1949, May 25th.

The COURT: All right, go ahead.

Q. (By Mr. Murphy, continuing):

"Q. To whom did you send this money?

"A. To the office of the Communist Party in Detroit, Michigan, downtown."

Did you make that answer?

A. I don't remember.

Q. (Reading):

"Q. Where is that located?

"A. On Cadillac Square."

Do you recall being asked that question and making that answer?

A. I don't remember.

Q. (Reading):

"Q. Do you know what building?

"A. The Lawyers Building."

Do you recall being asked that question and making that answer?

A. I don't remember.

The COURT: Was that where the Communist Headquarters was, in the Lawyers Building, at that time?

The WITNESS: Is the Judge asking me questions?

The COURT: Yes.

Mr. MURPHY: Yes.

78 A. Now I don't remember.

The COURT: Do you know where you lived at that time, what your street address was?

A. Yes, I do.

The COURT You do? What was your street address?

A. 3445 Evaline.

The COURT Where were you working at that time?

A. Same place as now, Detroit Workmen's Cooperative Restaurant.

The COURT: What is the address of that place?

A. 9234.

The COURT: What street?

A. Joseph Campau.

The COURT: All right.

Q. (By Mr. Murphy, continuing) You say you don't know or don't remember where the Communist Party Headquarters was located?

A. No, I don't remember this time.

Q. You didn't remember it and you don't remember it; is that right?

A. I don't remember.

Q. You don't remember. Do you know whether in May of 1949, whether you knew where the Communist Party Headquarters was?

A. On those dates I forgot when I know and when I don't know.

Q. You forgot when you knew and when you didn't know. Did you ever know where the Communist Party Headquarters was located?

A. Some time I knew.

Q. Some time you knew. And when was that?

A. I can't answer no dates.

Q. Well, what do you mean, you can't answer no dates?

A. Because I don't know.

Q. Well, was it last year?

A. Might be.

Q. It might be last year. And how did it happen that you knew where the Communist Party Headquarters was?

A. I read in the paper. I heard from the people.

Q. You read it in the paper. Is that the only reason you knew?

79 Did you have any other reason to know where the Communist Party was located, other than reading it in the paper?

A. Maybe some other reason. I don't remember.

Q. Pardon?

A. Maybe some other reasons.

Q. What were the other reasons? Did I understand you to say that you read it in the newspaper and that you heard from some other people there?

A. That is right.

Q. Is that what you said?

A. That is right.

Q. And what other people did you hear from?

A. I don't remember, and I don't want to mention somebody's names.

Q. You don't remember and you don't want to mention somebody's name; is that right?

A. Yes.

Q. Is that what you are saying?

A. That is right.

Q. I will ask you, then, Mr. Zydok, did you ever visit the Communist Party Headquarters in the Lawyers Building at any time?

A. I don't remember.

Q. You don't remember. Is it possible that you may have?

A. Maybe it is possible.

Q. Maybe it is possible. I will ask you then, Mr. Zydok, whether, when you were before the Hearing Examiner of the Immigration Service, and after being asked where the office of the Communist Party was located, and after being asked:

"Q. Do you know what building?"

you stated:

"The Lawyers Building."

I believe I have asked you that, and you say you don't recall that, making that answer?

A. I don't get your question.

80 Q. I believe you told me before you don't recall, you didn't recall being asked this question, referring to the Communist Party Headquarters:

"Do you know what building?"

And you made the answer:

"The Lawyers Building."

You say now that you don't recall being asked that question and making that answer?

A. I don't remember.

Q. You don't remember. I will ask you, then, whether you were asked this question:

"Who did you send it to there?"

Do you recall being asked that question?

A. I don't remember.

Q. And making this answer:

"I brought it myself."

Do you recall making that answer?

A. I don't remember.

Q. Well, I will ask you, then, whether or not you ever brought any money to the Communist Party Headquarters in the Lawyers Building yourself?

A. I don't remember.

Q. Pardon?

A. I don't remember.

Q. You don't remember whether you ever brought any money——

A. (Interposing:) No.

Q. (Continuing:) —to the Communist Party Headquarters in the Lawyers Building?

A. I don't remember.

Q. You don't remember; is that right?

A. That is right.

Q. Is it possible that you did?

A. I don't know.

Q. You might have?

A. I don't remember. I can't answer it. If I answer it—

81 Q. (Interposing:) Did you say that you didn't? You know whether you did or you didn't, don't you?

Q. If I don't remember, I don't know.

Q. You mean you just have no memory as to that at all; is that right?

(No response.)

Q. Are you suffering from amnesia?

A. I can't answer that because I don't know what is amnesia.

Q. You don't know what that is. Are you suffering from a loss of memory?

The COURT: He can't because he remembered where he worked, and where he lived, so he can't be suffering from amnesia.

Mr. BROWN: I submit, your Honor please, that this is also argumentative.

The COURT: No, I don't think that is. It might be objectionable on the ground he is asking for a medical conclusion.

Mr. BROWN: Well, he corrected that question.

By Mr. MURPHY (continuing):

Q. You remember well everything other than Communist activity; isn't that correct?

A. Not everything.

Q. Not everything. Well, you remember where you worked; you remember that you sold Bonds; don't you? And, collected money for the purchase of bonds?

A. I don't answer exactly how many I collect, if I remember.

Q. I think you mentioned the figure $50,000.

A. I didn't state exactly "50." Something like that.

Q. Didn't you mention the figure $50,000?

A. No. I say something around 50,000.

Q. Something around 50,000. Now, I am not asking you any figure in connection with monies you might have taken to the Communist Party Headquarters. I am just asking you if you took any money up there at any time.

A. I can't answer it because I don't remember.

Q. You just don't remember anything about that; is that correct?

82 A. That is correct.

Q. Now, you were Financial Secretary of the Hamtramck Section, weren't you, in 1949?

(No response.)

Q. What are you looking over there?

A. Do you want me to hang my head?

Q. I am just asking you why you looked over there.

A. I looked all over the room.

Q. I am just asking you why you looked over there this time when I asked you that question. Can you tell me?

A. Yes, I look all over the room.

Q. I am asking you why you looked over there; I am not asking you why you looked out the window.

A. Well, if I can look on this side, I can look this side.

Q. I am not asking you that. I asked why you looked over there.

A. Just because I turned my head.

Q. Just because you turned your head; is that right?

A. That is right.

Q. No other reason?

A. No other reason.

Q. Now, tell me whether or not you were Financial Secretary of the Hamtramck Section of the Communist Party in 1949?

A. I can't answer that question.

Q. What do you mean, you can't answer it?

A. I don't want to incriminate myself in this new law.

Q. Do you have any memory about it? Do you remember whether you were or whether you weren't?

A. Just I can't answer that question.

Q. Pardon?

A. Just I can't answer that question.

Q. Just you can't answer that question. Your memory doesn't become involved in that at all; is that right? No question of memory there, is there?

A. I can't answer that question.

Q. Why can't you answer it?

A. Because I don't want to incriminate myself——

Q. (Interposing:) Because you don't want to incriminate yourself?

83 A. (Continuing:) —about a member of the Communist Party.

Q. I will ask you if, as Financial Secretary of the Communist Party, you took money in the form of dues to the Communist Party Headquarters in the Lawyers Building?

A. I don't want to answer that question about Communist Party.

Q. Pardon?

A. I don't want to answer that question in order to incriminate myself under that new law.

Q. You don't want to answer any questions concerning the Communist Party; is that right?

A. That is right.

Q. And why?

A. I don't want to incriminate myself.

Q. Because you don't want to incriminate yourself. Has somebody told you that it is a criminal offense to be a Communist?

A. Yes. I read it in the paper and I heard people talk.

Q. You read it in the paper that it is a crime to be a Communist; is that right?

(No response.)

Q. Is that what you read in the paper?

A. I read in the paper that they put in jail and deport them.

Q. Do you consider that that is a criminal offense?

A. I don't understand that question.

Q. You don't understand that. All you are—as I gather, what you have read is that if you are a Communist you can be deported—Communist alien, you can be deported; is that what you mean?

A. That is right.

Q. And you say you read that in the paper, and other people have told you that; is that right?

A. That is right.

Mr. MURPHY: I have no further questions.

REDIRECT EXAMINATION.

By Mr. BROWN:

Q. What are your wages, Mr. Zydok, as head waiter at the restaurant?

84 A. I did not get that.

Q. What were your wages at the restaurant as head waiter?

A. What am I doing in the restaurant?

Q. No. Your wages. How much you earn.

A. $50.

Q. $50 what? A week?

A. A week.

Q. Do you have any other income from anywhere else?

A. No.

The COURT: Is this a non-tipping restaurant?

Mr. BROWN: I don't know.

By Mr. BROWN (continuing):

Q. Is it? Do you get tips as head waiter?

A. No.

Q. As waiter, just what are your duties out there, Mr. Zydok?

A. My duty, waiting on customers, and watch register, and I take charge of all the inside in the restaurant.

Mr. BROWN: I think that is all.

Mr. MURPHY: I have no questions.

The COURT: That is all, Mr. Zydok.

(The witness was thereupon excused.)

COLLOQUY

Mr. BROWN: I sent over to my office for the copy of the transcript, if I have it in the file, of the May 25th hearing. I am not sure whether I have a copy or not. I do have a copy of the transcript of the testimony that was taken in the subsequent hearing in October, 1948.

The COURT: I don't know——

Mr. MURPHY (Interposing): Do you want to use a copy of the May 25th? I will make one available to you.

Mr. BROWN: I told the Court if I had a copy I would be pleased to submit it to him to examine it. We have nothing to conceal in that testimony, or any subsequent proceeding.

Mr. MURPHY: Well, I propose to offer it.

Mr. BROWN: It is not admissible, but I would like to submit it for the Judge's—this is not a deportation case, but there is no intention to conceal any fact.

85 Mr. MURPHY: Well, just stipulate that is a copy and I will make it a part of our case here.

Mr. BROWN: Well, I don't think it is admissible, if the Court please, but I have no objection to the Court reading it. As a matter of fact, I wish the Court would read it.

The COURT: Well, let us mark it as an exhibit, then, and do you want to offer it, Mr. Murphy?

Mr. MURPHY: If there is any question as to its admissibility, I would be glad to put a representative of the Immigration Service on the stand to identify it as being part of their files and records, unless that will be stipulated by Mr. Brown, and it is a record made and kept in the regular and ordinary course of business of the Immigration Service, transcribed and made at or about the time the testimony was given.

The COURT: And that it pertains to this——

Mr. MURPHY (Interposing): The petitioner.

The COURT: The petitioner.

Mr. BROWN: Is that the one where I was present?

Mr. MURPHY: Yes.

Mr. BROWN: That is not the testimony of the proceeding before the Immigration Service.

Mr. MURPHY: Well, I submit that it is. This is a preliminary hearing before Examiner Donald T. Williams.

Mr. BROWN: That was a preliminary hearing that he did not sign. He was without benefit of counsel. I have here the official record of the deportation proceedings.

Mr. MURPHY: You don't contend, Mr. Brown, that that would affect your client's veracity, whether he had the assistance of counsel, do you? That is the only thing we are offering it for.

Mr. BROWN: I thought you were testifying——

Mr. MURPHY (Interposing): I am not testifying to anything. I was reading.

Mr. BROWN: I thought you were cross-examining him on the basis of something that was an official part of the record.

Mr. MURPHY: It is.

Mr. BROWN: Well, I take exception to that statement. It is not.

86 Mr. MURPHY: Well, then, we will put our witness on the stand.

The COURT: All right. Get the record identified.
Mr. MURPHY: Mr. Sureck.

* * * * * *

SURECK, JOSEPH, was thereupon called as a witness on behalf of the Government, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. MURPHY:

The CLERK OF THE COURT: Your name, please?
The WITNESS: Joseph Sureck.
Mr. MURPHY: Mark this, please.

(A transcript of proceedings before the Immigration and Naturalization Service, re John Zydok, dated May 25, 1949, was thereupon marked Government's Exhibit No. 5 by the reporter.)

By Mr. MURPHY:

Q. Will you give us your name, please?
A. Joseph Sureck.
Q. What is your business, Mr. Sureck?
A. I am employed with the Immigration and Naturalization Service in the Department of Justice at Detroit, Michigan.
Q. And in what capacity?
A. My title is "Investigator."
Q. And, as such, are you familiar with the files and records of the Department in the instant case concerning the petitioner, John Zydok?
A. Yes, sir.
Q. Do you have personal knowledge of the contents of that file?
A. Yes, sir.
Q. I will ask you, now, to look at Government's proposed Exhibit No. 5, and ask you whether or not you can identify that
87 as being a record taken from the files of the Department? (Handing exhibit to the witness.)
A. Yes, sir. This is a preliminary statement taken by Investigator Donald T. Williams from John Zydok on May 25, 1949, in connection with an investigation of John Zydok being conducted at that time.
Q. And do you know whether or not that record was made in the regular and ordinary course of business of the Immigration and Naturalization Service?
A. Yes, sir.

Q. And do you know whether or not it was made at or about the date that is reflected on that record, being May 25, 1949?

A. Yes, sir, it was transcribed within one or two weeks after that.

Q. How do you know that?

A. Well, because at that particular time I had supervision over the stenographic help in this particular section that was conducting this type of investigation.

Q. And you say that that records the testimony at a preliminary hearing; is that correct?

A. Yes, sir.

Q. And what do you mean by a "preliminary hearing"?

A. That is a hearing or an interrogation that takes place when an alien is called in for a question and answer sworn statement in connection with an investigation. It is not a deportation hearing.

Mr. MURPHY: I see. I will offer Government's Exhibit No. 5.

The COURT: Does this particular exhibit pertain to this particular petitioner?

A. Yes, sir, I can vouch for that.

The COURT: All right.

Mr. MURPHY: We will make an offer of Government's proposed Exhibit No. 5.

Mr. BROWN: I would like to cross-examine on it, first, if I may, before raising any objection.

Were you present, Mr. Sureck, at the time this preliminary examination was held?

A. I was not present at that interrogation.

88 Mr. BROWN: Do you know whether or not Mr. Zydok signed this transcript?

A. I would have to examine that particular copy.

Mr. BROWN: All right. (Handing exhibit to the witness.)

A. His signature does not appear thereon.

Mr. BROWN: Do you know whether or not he had the benefit of an interpreter?

A. I have a recollection of the day when Mr. Zydok was brought into our office to be interrogated. I have no recollection that an interpreter was present. I might add that if an interpreter was present the record would disclose that. I could examine the record and tell you. (Examining exhibit.)

The transcript does not disclose that an interpreter was present.

Mr. BROWN: When Mr. Zydok was brought in on May 25, 1949, did he come down voluntarily or was he brought in by some members of the Department of Justice, if you recall?

A. I have no personal knowledge as to how he was brought in.

Mr. BROWN: Your only knowledge, then, of this transcript is the

fact that the stenographic department was under your supervision?

A. At that time.

Mr. BROWN: You were not present at this particular examination?

A. I was not present at the interrogation, but I do know that Mr. Zydok, the petitioner, was in our office on or about that particular day and was interrogated by Mr. Williams.

Mr. BROWN: Do you know whether or not Mr. Zydok was informed as to his Constitutional right at that hearing?

A. I have no personal knowledge as to those facts.

Mr. BROWN: Do you know whether or not Mr. Zydok was informed that he had the right to benefit of counsel at that hearing?

A. I do not know.

89 Mr. BROWN: I will object to this transcript on the ground that this witness has not qualified himself to properly identify it. He was not present at the time it was taken. He is not prepared to testify as to—he is unqualified to testify as to the truth and veracity of the question and answers therein stated.

The COURT: The only thing necessary, as I view this particular exhibit, is whether or not this witness can identify that exhibit as a part of the files and records of the Immigration and Naturalization Department, whether or not it is a record that was made and kept in the regular and every-day course of business, and whether or not it is a record made at or about the time of the transaction,—the transaction being the hearing.

Now, that is sufficient, in my opinion, to make that exhibit admissible, because all I am considering the exhibit for is in an effort to ascertain whether or not the Attorney-General of the United States has abused a certain discretion.

Mr. BROWN: Well, I was going into that in just a minute, but first I think this would not be admissible by the identification by this witness. Perhaps the proper way of doing it, of course, is to bring in the stenographer so that she can be cross-examined with respect——

Mr. MURPHY (Interposing): I take exception to Mr. Brown's——

The COURT (Interposing): You have the wrong picture.

Mr. BROWN: Let me make a basic objection to why this is not admissible, if the Court please. The man was brought in for examination. According to the record here, he was not advised of his right; he was not advised that he was entitled to the benefit of counsel; he was not advised that certain things—that anything he would say might be used against him. And now at a later date, a year and a half, approximately a year and a half later, the United States Attorney comes forward and says that because of what he said in 1949 under these conditions, bail should not be granted to him.

Mr. MURPHY: That isn't what I am saying at all. You have said

the Attorney-General has abused his discretion. Now, I
90 am showing that what we have in our file, part of which you have in your hand, in which this man admittedly states he is an active Communist, that he collected funds to finance the Party, that is information that was available to the Attorney-General when he acted under the McCarran Act.

Mr. BROWN: Let me ask you this, Mr. Sureck: When this transcript was completed—I think you said it was completed about a week or ten days after it was taken. That would be the early part of June, 1949; is that correct?

A. That would be about right.

Mr. BROWN: Approximately. And the Attorney-General had the benefit of that transcript, did he not,—the Attorney-General's Office?

A. I can't testify to that.

Mr. BROWN: And it was after this transcript was made that Mr. Zydok was arrested on an order of deportation in October, 1949, was he not?

A. The warrant of arrest was served after that date there.

Mr. BROWN: And it was in October, 1949, that the Attorney-General in his discretion granted $2,000 bail to John Zydok and released him on bail; is that correct?

A. I know that he was released on bail.

Mr. BROWN: And part of the provisions of the bail bond were that he report regularly to the Department of Immigration and Naturalization Service; is that correct?

A. That is my understanding.

Mr. BROWN: And, so far as you know, he did report regularly, Mr. Sureck?

A. I can testify that I have seen Mr. Zydok at our office for the purpose of reporting.

Mr. BROWN: Thank you. And this was after this hearing on May 25, 1949?

A. I am sorry, I didn't get your question.

Mr. BROWN: His reporting and his release on bail was after May 25, 1949?

A. That is correct.

Q. And it was not until the passage of the McCarran-Wood Law, known as the Internal Security Act of 1950, that your office
91 received instructions from the Attorney-General to re-arrest and hold for deportation John Zydok; is that correct?

A. That is correct.

Mr. BROWN: And that order came to you in the form of a radiogram approximately a month after the passage of the Act?

A. I don't have the dates at hand.

Mr. BROWN: Do you know whether or not Mr. Zydok reported to the Department after the passage of the McCarran Act, which I think was about September 23, approximately?

A. I do not know.

Mr. BROWN: At all times up until the time that you received the radiogram, you knew where the Department could lay its hands upon John Zydok, did you not?

A. We had his address that he testified to on the stand.

Mr. BROWN: You know that that was his home?

A. I have no personal knowledge of that.

Mr. BROWN: Mr. Sureck, as investigator for the Department in Detroit, you have access, of course, to the files and records of John Zydok?

A. Yes, sir.

Mr. BROWN: And you know about the contents of the files and records on John Zydok?

A. I am familiar with it.

Mr. BROWN: Is there anything in the files and records which would indicate that John Zydok has committed any transgressions or violated any laws after the passage of the McCarran Act?

Mr. MURPHY: I will object to that question on the grounds it involves the disclosure of information that may be confidential to the Attorney-General.

The COURT: I will sustain the objection.

Mr. BROWN: Do you yourself, Mr. Sureck, know of any reason why Mr. Zydok was ordered to be re-arrested, except for the information contained in your files?

A. He was arrested on orders received from the Attorney-General.

92 Mr. BROWN: And the Attorney-General gave no reason for the executing of those orders?

A. I would have no knowledge of any reasons.

Q. Do your records disclose whether or not the Department informed the Attorney-General as to whether Mr. Zydok violated any provisions of reporting?

A. The files would not disclose that he violated any provisions of the reporting.

Mr. BROWN: Then you would say that he did not violate any provisions of the reporting?

A. I would not know.

Mr. BROWN: Do you happen to know how many copies of the proposed Exhibit 5 were made at the time?

A. I know the usual practice, and that is to make an original and 5 copies.

Mr. BROWN: And is it the practice to send one of the copies to the attention of the Attorney-General at Washington?

A. It would be a practice to submit a copy, along with an application for warrant of arrest that, would go to our office in Washington, D. C. That is the Office of Immigration and Naturalization Service.

Mr. BROWN: And do you know whether or not that practice was followed in this case?

A. I would have to examine the file to ascertain that.

Mr. BROWN: Will you do so? Will you examine the file and tell us that, please?

A. (After examining file): Yes, sir, a copy was sent to our Central Office in Washington, D. C.

Mr. BROWN: Deportation proceedings are now pending, are they not, against John Zydok?

A. Yes, sir.

Mr. BROWN: And they are set for hearing on November 10, 1950; that is, the resumption of the hearing?

A. It is a resumed hearing. A hearing *de novo* was started in September of this year.

Mr. BROWN: That was after the proceedings had been ruled improper by the United States Supreme Court and the Department had to start, re-commence those proceedings.

93 A. The original proceedings in 1949 or 1950 were held to be illegal under the Sung Decision.

Mr. BROWN: Do you know, Mr. Sureck, that these deportation proceedings sometimes take quite some time to complete?

A. I might add that it hasn't taken them long for the Government to complete its case. The cases have been dragged out because the various counsel for respondents have requested adjournments.

Mr. BROWN: Well, for one reason—I wasn't reflecting on the Government's delay, Mr. Sureck. Please forgive me if I gave you that impression; I was not at all. What I was driving at was this, that because of a number of—large number of factors—the fact that the presiding inspector is a non-resident, and the fact transcripts have to be made and briefs filed, and opinions have to be written by the Director of Naturalization, those things take some time, do they not?

A. If an appeal is taken; yes, sir.

Mr. BROWN: Do you know, of your own knowledge, that there are some deportation proceedings pending which have been pending for some years?

A. I have heard of them.

Mr. BROWN: If an appeal were taken in the matter of John Zydok, it is likewise possible that might take some years to be completed, might it not?

A. That is conjectural. I can't answer that, Mr. Brown.

Mr. BROWN: Under the law, if—do you know whether or not Poland is issuing visas to deportees?

A. I have no direct knowledge of that. The only instances I know where applications were made, they were turned down. Whether Poland is turning visas down in every case, I have no knowledge of that.

Mr. BROWN: Do you know of your own personal knowledge, or by review of the file, whether or not there has been any change in the conduct of Mr. Zydok since he was admitted to bail—strike that.

Do you know of any change in the conduct or actions of Mr. Zydok since the passage of the McCarran-Wood Law?

94 Mr. MURPHY: Well, just a minute. I will object to that on the ground it is immaterial.

The COURT: I think I will take the answer. Go ahead. You are talking about his general conduct, I presume, and on the basis of information that this witness has.

Mr. BROWN: Yes, of course.

The COURT: All right.

A. From observation of the respondent or the petitioner on the witness stand today, I would say there has been a continuation of the reasons for which he was originally arrested.

Mr. BROWN: Well, has there been any change in his conduct or action with respect to—has there been any change in the conduct or the actions of the petitioner since the passage of the McCarran-Wood Law?

A. I know of no increased activity on the part of the petitioner.

Mr. BROWN: Have you received any notification from the Attorney-General's Office, or the Attorney-General himself, as to why Mr. Zydok was arrested, except for the passage of the McCarran-Wood Law?

Mr. MURPHY: I submit that question has been asked and answered.

The COURT: It has been. You have asked that before.

Mr. BROWN: That is all.

By Mr. MURPHY, continuing:

Q. You were asked by Mr. Brown, Mr. Sureck, whether you noticed any change in the petitioner's conduct since the passage of this Act. Did I understand your answer to the last question that you said you had not?

A. By "change" I mean I know of no decreased activity on his part as well as increased activity.

Now, my assumption is being made—is based upon knowledge of the fact and admissions made my presence that he is a member of the Communist Party.

Q. And you have had opportunity to observe his conduct in the courtroom since the beginning of this hearing?

A. I have.

Q. And would you say that his conduct here as a witness has changed in any respect since your last contact with him?

95 A. No, sir.

Q. Or has it always been that type?

A. It has not changed. By that I mean he still shows an affinity and leaning toward the Communist Party.

Q. With respect to the deportation hearing that you say was begun in September, why was that not completed at that time?

A. Counsel for the petitioner requested an adjournment in order to secure additional evidence to present.

Q. And that is why the hearing is pending at the present time?

A. That is correct.

Mr. MURPHY: That is all.

Mr. BROWN: Just two questions, Mr. Sureck.

* * * * *

CROSS EXAMINATION.

By Mr. BROWN:

Q. Prior to the passage of the McCarran-Wood Law, Mr. Zydok was very cooperative as a witness, was he not, both at the preliminary hearing in May, 1949, and at the subsequent hearing in 1949?

A. At the subsequent hearings, he did not testify.—No, with draw that statement. He did testify at the hearing that was declared illegal, but at the hearing in September——

The COURT (Interposing): That is a difficult question, I think, for this witness to answer, in view of the testimony of the petitioner himself here today that he himself doesn't remember whether he was cooperative or not because he doesn't remember any of the questions or any of the answers. So, if he himself cannot aid the Court in telling us whether he was cooperative at that time, how can this witness, who has no way of entering the mind of this petitioner, give you any assistance on your question?

Mr. BROWN: Well, Mr. Sureck was present at the previous deportation hearing.

The COURT: Yes; but the subject matter of the entire controversy cannot tell us today whether he was cooperative or not. He

96 has no recollection of the hearing, apparently, or at least he has no recollection, according to his testimony today, of any questions that were asked him or any answers, or whether he told the truth or didn't. So, I don't know how this witness can

substitute his judgment for the judgment of the party that was answering the questions.

Mr. BROWN: It may be that the passage of the McCarran-Wood Law made a substantial change in the——

The COURT (Interposing): You have no right to assume that because, after all, you cannot go into the man's mind here. All we can do is take him from his testimony today and draw conclusions from that. This witness can't substitute his judgment for whether or not this party was cooperative.

Mr. BROWN: Well, if he knows, he can certainly answer, can he not?

Mr. MURPHY: I submit it calls for a conclusion on his part whether he was cooperative.

The COURT: I will sustain the objection.

Mr. MURPHY: You can ask him what he said. There is no objection to that.

By Mr. BROWN, continuing:

Q. At the prior deportation hearing, Mr. Sureck, at which you were present, did Mr. Zydok readily answer questions respecting membership in the Communist Party at that time?

Mr. MURPHY: I will object to that as again calling for a conclusion as to whether or not he readily answered questions.

Mr. BROWN: Mr. Sureck was present. He can testify, if he knows.

Mr. MURPHY: Whether he "readily"? How does he know how he answered questions?

Mr. BROWN: I think Mr. Sureck is qualified to answer that. May I have a ruling of the Court?

Mr. MURPHY: I submit it still calls for a conclusion on his part. Ask him what questions he was asked.

Mr. BROWN: I am not going to go through a 60-page deposition.

Mr. MURPHY: I submit that is the proper way to do it, to use your phrase.

97 The COURT: I will take the answer. Go ahead.

A. Mr. Brown, I was not present at the hearing that was declared to be illegal. I think the date of that was in October, 1949. I was present—in fact, I was the examining officer at the hearing held in September of this year. At that hearing he did not take the stand when asked to do so by the presiding officer, but at that hearing through his counsel, that was yourself, the petitioner admitted membership in the Communist Party from 1919 until about 1938, and from 1947 to the date of the hearing. He was a member at the time of the hearing. He also admitted

that he was Financial Secretary of the Hamtramck Section of the Communist Party.

To that extent, he was cooperative.

By Mr. BROWN, continuing:

Q. And the Attorney-General had knowledge of that information, did he not?

A. That, I cannot answer as to that.

Mr. BROWN: That is all.

REDIRECT EXAMINATION.

By Mr. MURPHY:

Q. That hearing was on September 19, 1950, was it not?

A. I just remember it was September, 1950.

Q. And at that time the Attorney-General did not have the benefit of the McCarran Act?

A. That is correct.

Mr. MURPHY: That is all.

The COURT: You say you, as Hearing Examiner, asked the witness to take the stand and be sworn?

A. No, sir. There was a Hearing Examiner who presided. He asked the petitioner to take the stand. I was the examining officer representing the Government.

The COURT: Oh, I see. And did he refuse to take the stand?

A. He merely declined to take the stand at that time.

The COURT: All right.

98 RE-CROSS EXAMINATION.

By MR. BROWN:

Q. Mr. Sureck, in the practice of the hearings, deportation hearings before the Department, the deportee, the alleged deportee, has the right to take the stand or not take the stand; is that correct?

A. It is the usual procedure to ask the deportee to take the stand.

Q. And he did enter into a stipulation at that time admitting the facts that were set forth in the previous hearing, did he not, namely, that he had been a member of the Communist Party and was Financial Secretary of the Hamtramck Section?

A. That is correct.

Q. So that, so far as the record was concerned for deportation purposes that stipulation was adequate?

A. That is correct.

Q. And if there was anything that was lacking in the stipulation, you still had the right to put him on the stand under the rule and obtain that further information from him?

A. I wouldn't say we had a right to put him on the stand. He declined to take the stand when asked by the Hearing Officer. That is my recollection.

Q. Well, let me ask you to recollect further, if you will, Mr. Sureck, and try to recall that the reason he did not take the stand was because we had agreed to stipulate certain facts which would have facilitated the proceeding, making certain admissions which the Department wanted and could have gotten from his being on the stand?

Mr. MURPHY: I submit as to that the record will be——

Mr. BROWN (Interposing): At any rate——

Mr. MURPHY (Interposing): Just a minute. (Continuing):— that the record of the hearing would be the best evidence.

The COURT: I will take the answer.

A. I cannot tell you, Mr. Brown, what might have been your reasons for not putting the man on the stand. You were the one that made the decision at that time. All I can testify is what took place, what I observed.

99 By Mr. BROWN, continuing:

Q. Let me ask this, Mr. Sureck: From our conversation at that time do you not recall that the reason for his not taking the stand was because by stipulation you could have gotten whatever information was required for your purposes; is that correct?

A. It was my understanding at the time of the hearing we would reach an agreement as to his membership, which would be similar to what was done in the previous hearing. That was correct.

Q. And there was nothing else asked that was refused in the stipulation? I mean, whatever was asked for was granted, was it not?

A. I don't remember everything was granted, but you agreed sufficiently to prove membership in the Communist Party.

Mr. BROWN: That is all.

* * * * * * *

REDIRECT EXAMINATION.

By Mr. MURPHY:

Q. This stipulation was a stipulation entered into by yourself and Mr. Brown; is that correct?

A. And the petitioner.

Q. Did the petitioner sign it?.

A. It was an oral, a verbal agreement.

Q. Was he sworn as a witness?

A. To my knowledge, the petitioner was not sworn. To my knowledge, the agreement was—to my recollection, the agreement was made by Mr. Brown, or expressed to the Court, and it was agreed to by myself and I believe——

Q. (Interposing): In the presence of——

A. (Interposing): In the presence of the petitioner.

Q. In the presence of the petitioner?

A. Right.

Q. After he had declined to take the stand?

A. That is my recollection.

Mr. MURPHY: That is all.

* * * * * * *

100 RECROSS EXAMINATION.

By Mr. BROWN:

Q. Mr. Sureck, are you trying to leave the impression here that he refused to take the stand or that it was easier for the Government if we stipulated membership in the Communist Party at the date that you knew he had been a member, or at least as to the dates that you had information that he was a member?

A. I don't want to leave any particular impressions, Mr. Brown. I merely want to inform the Court that at the time of the hearing you decided not to put the respondent on the stand. What your reasons were, I do not know.

Q. Wasn't that——

A. (Interposing): I want to add, further, that I expected to reach an agreement with you as to membership. That may have been your reason for not putting him on the stand.

Q. Wasn't it for the purpose of facilitating the proceeding, and the Service wanted certain information about him, and that was given to you voluntarily by stipulation, wasn't it? It wasn't because he declined to take the stand on that ground. It was because you wanted a stipulation regarding certain facts, and the stipulation was given to you, without objection, in open court. Isn't that what took place, Mr. Sureck?

A. On the one hand it might have facilitated the hearing; but, on the other hand, the Government did not have the benefit of asking the petitioner questions which it would like to have asked him.

Q. You didn't raise that objection to me, though, at the time, did you?

The COURT: Well, the thing has been completely developed.

Mr. BROWN: All right.

The COURT: The petitioner declined to take the stand upon your advice, and there was a stipulation entered into, but that apparently, wasn't comprehensive enough for the Government. That is what I take from his testimony.

Mr. BROWN: That isn't what took place, your Honor.

The COURT: He just got through saying they would have desired to ask the petitioner certain questions, which they were foreclosed from doing because he declined to take the stand. That was the testimony.

101 By Mr. BROWN, continuing:

Q. Mr. Sureck, just so it is clarified in the Court's mind as to what actually took place——

The COURT: (Interposing): My mind is well clarified. Your mind seems to be the mind that can't be clarified in this proposition.

By Mr. BROWN, continuing:

Q. Mr. Sureck, let me ask you this: You could have refused the stipulation, could you not, under the law?

A. I did not have to enter into the stipulation, that is correct.

Q. Under the law, if he refused to take the stand, you could have put on any testimony that you had that was obtained at a prior hearing, such as the preliminary hearing on May 25th; is that correct?

A. I could have introduced that preliminary statement, that is correct.

Q. In other words, it was your choice that the stipulation was made or rejected; is that correct?

A. The choice of the Service, but it is my recollection that the stipulation was agreed to because it presented a more accurate picture of his membership in the Communist Party.

In other words, at his preliminary hearing he did not admit at that time the period of membership which you agreed to in your stipulation.

Q. That is right. You did not disclose that to me, though?

A. It wasn't necessary.

Q. All right. But, the point I want to make is that under the law, at deportation hearings either you have the choice of compelling him to take the stand or else, if he declines, any conclusion that the presiding inspector can make will be final so far as——

The COURT (Interposing): He has already answered it. He can't compel the man to take the stand.

By Mr. BROWN, continuing:

Q. But you could have refused the stipulation, and put on the other record, couldn't you? It was a voluntary choice on
102 your part to accept that stipulation indicating membership during certain periods of time?

A. Well, I don't think I have to answer here what motivated my decision at that time.

Mr. MURPHY: I think all he is asking is whether it was voluntary, Mr. Sureck.

The COURT: No. This thing originally started, as I recall,—the reason for this line of questioning is whether or not the petitioner cooperated, and that is the basis for this questioning.

Mr. MURPHY: The inference I was getting was that the witness was giving Mr. Brown the impression that somebody was holding a gun at his head. I don't think that is the witness' position at all.

By Mr. BROWN, continuing:

Q. Well, now, at the hearing on October 20 and 21, 1949, Mr. Zydok did take the stand, did he not?

A. Mr. Brown, I took no part in that hearing.

Q. But this transcript is part of your record, is it not?

A. From the transcript I know he did take the stand, yes.

Q. And he was examined at length, was he not, by the presiding inspector?

A. Well, I presume that he would have been.

Q. So it wasn't that he declined to take the stand?

The COURT: You are talking about two different occasions here, aren't you?

A. I am talking only about the hearing of September, 1950.

By Mr. BROWN, continuing:

Q. On October 20, 1949, and on October 21st, was the first deportation hearing against Mr. Zydok?

A. That is correct.

Q. At that time he took the stand, did he not?

A. Yes, that is correct.

Q. At that time he was examined by Mr. Patterson, the examining inspector, and he was sworn; is that correct?

A. I am sure that is correct.

103 Q. And after he took the stand a stipulation was made in this hearing, in this deposition, admitting membership during certain periods of time; is that correct, Mr. Sureck?

A. I think that is correct.

Q. So that when he appeared at the hearing in September, 1950, at the second deportation hearing, you had the benefit of this transcript?

A. That is correct.

Q. You had the benefit of prior stipulation?

A. That is correct.

Q. You had the benefit of certain admissions?

A. That is correct.

Q. And you still accepted the stipulation of membership instead of his direct testimony on the stand?

A. He didn't take the stand at the second hearing, Mr. Brown. If he had been willing to take the stand I wouldn't have accepted the stipulation.

Q. Do you have a transcript of that proceeding that was taken in September, 1950, with you?

A. Yes, sir.

Q. May I see it?

A. I have it here.

Q. May I see it, please?

A. Yes, sir. (Handing document to Mr. Brown.)

Q. Mr. Zydok was sworn on that day, wasn't he, Mr. Sureck?

A. I would have to examine the transcript. I have no present recollection of that fact.

Q. All right. (Handing document to the witness.)

A. He was sworn for the purpose of identifying the warrant.

Q. Can you show me, Mr. Sureck, in this transcript where Mr. Zydok was asked to take the stand and he declined?

(The witness thereupon examined the transcript.)

The COURT: It is recess time. I will take a 15-minute recess.

(A recess was thereupon taken.)

* * * * * * * *

104 Q. (By Mr. BROWN, continuing): You have had an opportunity, Mr. Sureck, to look over the testimony of the hearing in September, 1950, have you not?

A. Yes, sir.

Q. What is your recollection now as to whether he was asked to take the stand at that time?

A. I find, Mr. Brown, that my recollection in connection with the deportation hearing of September 19, 1950, was not good. I find that in that case he wasn't asked the question whether or not he was going to take the stand. I apparently got myself confused between the transcript of the September 19, 1950 case and the previous hearing on October 20, 1949, where he was asked that question.

Mr. BROWN: Thank you.

* * * * * * * * *

RE-DIRECT EXAMINATION.

By Mr. MURPHY:

Q. And in the previous hearing was he asked to take the stand?
A. At that time when he was asked to take the stand through his counsel, he declined to take the stand at the time the question was asked.
Q. And in the second hearing, then, a stipulation was entered into between counsel as to his Communist Party affiliations; is that correct?
A. Yes, sir.

Mr. MURPHY: That is all.

RE-CROSS EXAMINATION.

By Mr. BROWN:

Q. But, at the previous hearing on October 20 and 21, 1949, he did take the stand later?
A. Later on in the hearing he did take the stand.
Q. And was fully examined by the presiding inspector?
A. That is correct.

Mr. BROWN: That is all.
105 Mr. MURPHY: That is all.

(The witness was thereupon excused.)

COLLOQUY

The COURT: Is there any additional objection to the admission of that Exhibit No. 5, the transcript of that hearing?
Mr. MURPHY: Of May 25, 1949.
Mr. BROWN: Yes your Honor. I object to it for the same reasons which I originally gave. There are other transcripts in the proceeding taken later, and I have no objection to those, which are official transcripts of the hearing at which he was sworn and in which he had

benefit of counsel. And, for the purpose of the record, I may say that there is contained in those later transcripts admissions that he had been a member of the Communist Party and that he was Financial Secretary of the Hamtramck Section of the Communist Party.

The COURT: Well, I will ——

Mr. BROWN (Interposing): There is no argument about that portion of it, your Honor.

The COURT: I will admit Exhibit No. 5 as a record of the United States Department of Justice that was available to the Attorney-General of the United States at a time prior to the time this petitioner was taken into custody under the apparent provisions of the McCarran-Wood Act.

Now, if you have any other or additional transcripts that you want to offer, Mr. Brown, why, I certainly will be glad to see them.

Mr. BROWN: Well, I ——

The Court (Interposing): I am not passing on whether the hearing was regular or irregular. I am just accepting that as information that was in the possession of the Attorney-General of the United States prior to the time I have just mentioned, and which may or may not assist me in reaching a conclusion as to whether or not the Attorney-General of the United States abused any discretion vested in him by the Congress in relation to the present petition I have before me.

Mr. BROWN: Very good, your Honor. And, in that connection I may say this, that I have no objection to the Court examining the subsequent proceedings that took place in the deportation hearing, but I do not want to make them a matter of record because I do not want to clutter up the record, for the reason it might be too expensive in case of an appeal.

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That concludes the testimony so far as I have on behalf of the petitioner.

The COURT: All right.

Mr. MURPHY: The Government has no further testimony, your Honor.

The COURT: All right. Will there be an argument?

(Further discussion was had between Court and Counsel, which was reported, but is not here transcribed.)

[Reporter's Certificate omitted in printing.]

107

IN UNITED STATES DISTRICT COURT.

NOTICE OF APPEAL—Filed November 16, 1950

SIRS:

You and each of you will please take notice that John Zydok, the petitioner-appellant in the above entitled matter, hereby appeals

to the United States Court of Appeals for the Sixth District from the Findings of Fact, Conclusions of Law and Order of Honorable Thomas F. Thornton, one of the Judges of the United States District Court for the Eastern District of Michigan, Southern Division, made and entered on the 10th day of November, 1950, denying the petition for writ of habeas corpus filed herein.

Dated: Detroit, Michigan, November 14, 1950.

ALAN N. BROWN,
Attorney for Petitioner-Appellant,
Office & P. O. Address
963 Penobscot Building,
Detroit 26, Michigan.

To: GEORGE M. READ,
Clerk of the United States District Court
for the Eastern District of Michigan
Southern Division

EDWARD T. KANE,
United States Attorney for the
Eastern District of Michigan,
Attorney for Respondent-Appellee,
Federal Building,
Detroit 31, Michigan.

108-109 IN UNITED STATES DISTRICT COURT

STIPULATION—Filed December 7, 1950

It is hereby stipulated and agreed between the parties hereto by their respective counsel, that Exhibit 5, referred to on page 105 of the Transcript of Proceedings [page 86 of the printed record], and referring to the deportation proceeding held May 25, 1949, shall be submitted to the Sixth Court of Appeals as an original exhibit.

ALAN N. BROWN,
Attorney for Petitioner-Appellant.

EDWARD T. KANE,
United States Attorney,

By JOSEPH C. MURPHY,
Attorney for Respondent-Appellee.

Dated: Detroit, Michigan, December 1, 1950.

[Stipulation Re Designation of Record on Appeal omitted in printing.]

110 [Stipulation Re Comparison of Record omitted in printing.]

111 Clerk's Certificate to foregoing transcript omitted in printing.

112 IN UNITED STATES COURT OF APPEALS

JUDGMENT—Entered March 26, 1951

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court in
113-114 this cause be and the same is hereby reversed.

115 UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 11312

JOHN ZYDOK, *Appellant*,

v.

JAMES W. BUTTERFIELD, Director of the Immigration and Naturalization Service, Detroit, Michigan, *Appellee*.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

OPINION—Decided March 26, 1951

Before HICKS, Chief Judge; ALLEN and MILLER, Circuit Judges.

HICKS, Chief Judge. Appeal from an order of the district court dismissing a writ of habeas corpus.

Appellant, John Zydok, an alien, entered the United States in 1913. He was arrested in August, 1949 upon a warrant issued by the Assistant Commissioner, Enforcement Division, Immigration and Naturalization Service of the United States Department of Justice.

The warrant charged that he was found in the United States in violation of the Immigration Laws. The specific charge was that he was a member of an organization that advised, advocated or taught the overthrow, by force or violence, of the Government of the United States; and which wrote, circulated, distributed, printed, published or displayed written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government.

Appellant was released under bond in the sum of $2,000.00. The condition of the bond was that appellant "shall be produced when required for a hearing or hearings in regard to the charge
116 upon which he has been taken into custody, and for deportation if he should be found to be unlawfully in the United States." 8 USCA, Sec. 156 (Sec. 20 of the Immigration Act of 1917).

Following appellant's arrest, a deportation proceeding was instituted against him before the Immigration and Naturalization Service at Detroit, Mich., to determine the deportability of appellant and this proceeding was pending when appellant was again arrested on October 23, 1950. His re-arrest was based upon the following provision of Sec. 23 of the Internal Security Act of 1950, to wit:

> ". . . Pending final determination of the deportability of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole,"

and was without warrant. He was held in prison without bail; hence the writ of habeas corpus.

The pertinent question here is, whether the Attorney General abused his discretion in causing appellant to be held without bail.

It is undeniably true that appellant was, before his original arrest, a member of the Communist Party and was financial secretary of the Hamtramck Division of the Communist Party of Michigan for the year 1949 and that as such secretary he assisted in the collection of funds to be used in the defense of the Communist Party leaders who were tried and convicted in New York under the Smith Act (18 USC, Sec. 2385) of conspiring to advocate the overthrow of the Government and that the United States Department of Justice had information to that effect when appellant was rearrested. If in the exercise of sound judgment upon whether appellant should have been continued in custody, or have been released on bail, the Attorney General was limited to a consideration of the undisputed fact that appellant was a Communist, little may be urged against his decision in view of the preamble to the Internal Security Act of 1950. But we think that in determining whether appellant should have been

granted or denied bail the Attorney General had a much wider latitude for decision.

Discretion does not mean decision upon one particular fact or set of facts. It means rather a just and proper decision in view of all the attending circumstances. *The Styria, Scopinich, Claimant*
117 v. *Morgan*, 186 U. S., 1, 9. There are many circumstances which involve decision.

Appellant was seventeen years of age when he arrived in this country from Poland in 1913. Since then he has lived continuously in the State of Michigan. He has been a waiter in an English speaking restaurant in Hamtramck, Mich., for seventeen years and for a great part of that time he was head waiter. He owns his own home in Detroit and has a family consisting of his wife, two sons, a daughter, and five grandchildren. Both sons served in the armed services of the United States in World War II. His children and grandchildren were born in this country and his daughter married here. During World War II while appellant was head waiter in the restaurant he sold about $50,000.00 worth of U. S. War Bonds and during that period he donated blood on seven occasions to the Red Cross for the United States Army.

Before his second arrest and while he was at large on bail he reported regularly to the Department of Immigration and Naturalization Service. The record fails to disclose that he has violated any law or that he is engaged or is likely to engage in, any subversive activities. The fact that he assisted in collecting funds for the aid of the Communist defendants being tried under the Smith Act can hardly be regarded as an objection to the allowance of bail, for these defendants themselves were allowed bail after the affirmance of their convictions and even during the pendency of their appeals. *Williamson, et al. v. United States*, U. S. Supreme Court, Law Ed. Advance Opinions, opinion by Mr. Justice Jackson, Nov. 20, 1950, pending certiorari.

The deportation proceedings against appellant have been pending since October, 1949 and there is no indication of an early termination thereof. In the meantime appellant is confined in jail.

The purpose of granting bail is to secure the presence of appellant when and as required. The denial of it is not intended as punishment. If bail is granted in some fair amount there is no reasonable ground to indicate that appellant would forfeit it.

The district court seemed of the opinion that it was the duty of appellant to make such clear and convincing showing as would justify it in holding that the Attorney General or his subordinates had gone beyond the limit of sound discretion in denying bail and the court found that as a witness appellant had ample opportunity to testify that he was not a member of the Communist
118-119 Party or a part of the Communist movement at the date of his last arrest. While on the witness stand appellant

claimed his conditional privilege against self-incrimination and upon that ground declined to testify touching his Communistic relations. We think that his refusal to testify should not have operated against him. *Blau* v. *United States*, decided by the Supreme Court on Dec. 11, 1950.

We think that a fair consideration of the factors above set out in their aggregate require that appellant should have been granted bail in some reasonable amount. This view is more nearly in accordance with the spirit of our institutions as it relates even to those who seek protection from the laws which they incongruously seek to destroy. See *Carson* v. *Landon, Dist. Director, etc.* (CCA 9), decided Dec. 16, 1950; *United States* v. *Dist. Director, etc.*, 169 Fed. (2d) 747, 752 (CCA 2).

The result is that the order dismissing the writ of habeas corpus is reversed and the case remanded to the district court with directions to proceed in accordance with the views herein expressed.

Reversed.

120 SUPREME COURT OF THE UNITED STATES

No. 136, October Term, 1951

[Title omitted.]

ORDER ALLOWING CERTIORARI—Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 35, *Carlson et al. v. Landon, District Director, etc.*

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 972472 340